SIVAPALAN GOVINDASAMY v. UNIVERSITI MALAYA

COURT OF APPEAL, PUTRAJAYA
AHMADI ASNAWI JCA
BADARIAH SAHAMID JCA
MARY LIM JCA
[CIVIL APPEAL NO: W-01(A)-362-06-2018]
12 JUNE 2020

ADMINISTRATIVE LAW: *Exercise of administrative powers – Judicial review – Certiorari – Application for – Application to quash decision made by University for failing applicant in Degree of Doctor of Philosophy ('PhD') merely on basis applicant did not submit thesis within publication date in 2017 – Conferment of PhD – Powers of University's Senate – Judicial scrutiny – Whether exclusive jurisdiction of University to determine whether candidate has satisfied requirements to be conferred degree – Whether academic matter amenable to supervision of courts – Whether dating of PhD thesis stipulated by Guidelines adopted by the Senate – Whether date of thesis a matter within academic judgment of the Senate – Whether there was non-compliance by applicant with relevant Regulations, Rules and Guidelines in relation to PhD thesis*

On 16 October 1996, the applicant, a senior lecturer at University of Malaya, had registered with the respondent, a public university, as a candidate for the Doctor of Philosophy ('PhD'). Approximately nine years after the registration of his PhD, the applicant submitted his thesis to the respondent on 20 March 2006. The respondent forwarded the applicant's thesis for examination to three examiners (two external examiners from India, Dr Faraday and Dr Ilamathy and one internal examiner, Professor Rajantheran) and all three examiners, in their reports, had recommended that the applicant be awarded a PhD. A *viva voce* of the applicant's PhD thesis was held by the Examination Committee ('EC') on 28 September 2006 whereby the EC decided that the applicant's PhD thesis had achieved sufficient academic merit to be awarded a PhD subject to the applicant making minor corrections, without re-examination, as recommended by the examiners, within a period not exceeding six months and verified by the supervisor/ internal examiner. Subsequent to the abovementioned *viva voce*, one of the members of the EC, Professor Dato Dr Mohammad Redzuan Othman ('Redzuan'), noticed there were suspicious circumstances in the reports of the two external examiners which raised issues as to their credibility. Subsequently, in a letter by the respondent dated 4 December 2009 issued to the applicant, the respondent, amongst others, informed the applicant that the result of the *viva voce* that was held on 28 September 2006 in respect of the Doctor of Philosophy, was nullified as a meeting of the respondent's Senate had rejected the reports of the external and internal examiners. The

applicant was required to attend a *viva voce* on 10 December 2009, of which the applicant refused. Thus, the Senate on 17 December 2009, decided that the applicant failed his PhD program. The applicant then filed an application for judicial review ('first JR') to challenge the decision. The High Court in the first JR allowed the applicant's prayer for *certiorari* to quash the respondent's decisions, which nullified the *viva voce* of 28 September 2006 and the letter deciding that the applicant had failed his PhD, and dismissed the applicant's prayers for a *mandamus* to compel the respondent to confer the PhD degree on the applicant based on the oral decision of the *viva voce* on 28 September 2006. The respondent then directed the Institut Pengajian Siswazah ('IPS') to take the following measures to process the applicant's thesis: form a new EC, appoint new examiners and require the applicant to attend a *viva voce*. The applicant did not attend the scheduled *viva voce*. On 16 March 2015, in the applicant's absence, the EC proceeded with the *viva voce* and decided that the applicant's thesis required major corrections which had to be submitted by 15 September 2015 and if the applicant failed to do so, the applicant would fail his PhD. The applicant challenged the abovementioned decision of the EC in his second application for judicial review ('second JR'). The High Court allowed, *inter alia,* a *certiorari* to quash the respondent's decision and allowed a declaration that the respondent proceed to make a decision on the applicant's PhD degree based on the thesis submitted on 20 March 2006 and the reports of the external and internal examiners in relation to the said thesis. In accordance with the order of the High Court, the Senate made a decision by referring to the recommendation of the EC on 28 September 2006 in which the applicant was required to make corrections on his thesis within six months from the date of the Senate and such corrections to be verified by the supervisor of the applicant's thesis and to be submitted by 28 March 2017. In accordance with the Senate's decision, the respondent appointed one Dr Hanafi as the new supervisor for the applicant's thesis. Dr Hanafi then informed the applicant of the appropriate minor corrections, which were recommended corrections in respect of the formatting of the thesis. The applicant duly carried out these minor corrections and forwarded the same to Dr Hanafi. In the course of the applicant's communication with IPS, he was informed by IPS that his thesis must be dated 2017. The applicant, however, was adamant that his thesis be dated 2006, as he claimed that he would suffer prejudice in terms of his academic credibility, as the research undertaken for his thesis was up to 2006 only. On 28 March 2017, the applicant submitted his thesis dated 2006, without verification from his supervisor, Dr Hanafi. On 2 May 2017, the Senate informed the applicant that the thesis must be verified by his supervisor and dated 2017. The applicant refused to accede to the requirements set by the Senate. On 24 June 2017, IPS informed the applicant

that the Senate decided that the applicant had failed his PhD for the reason that he had failed to submit his final thesis with the date 2017 within the stipulated period. The applicant filed for a third judicial review application ('third JR application') seeking primarily for, *inter alia*, a *certiorari* to quash the conditions imposed by the respondent in its decision where, having agreed to confer on the applicant the degree of PhD, it required the applicant to submit his final thesis with a publication date in 2017 and a declaration that it was neither reasonable, rational nor proportionate for the respondent to fail the applicant entirely from the degree of PhD merely on the basis that his final thesis was printed with a publication date of 2006 instead of 2017. The argument forwarded by the applicant was that there was an absence of specific provisions in both the University of Malaya (Degree of Doctor of Philosophy) Regulations 2007 ('Regulations') and the University of Malaya (Degree of Doctor of Philosophy) Rules 2007 ('Rules')', which stipulate that the publication date of a PhD thesis must be the year of submission of a thesis. The applicant submitted that the respondent could not rely on the 'Guidelines for The Preparation of Research Reports, Dissertations and Thesis' ('Guidelines') as the power of the Senate was subject to the Rules and Regulations. In addition, where the applicant had achieved sufficient academic merit to be awarded a PhD, it was unreasonable, irrational and illegal for the respondent to reject the applicant's thesis merely on the grounds of the date of the thesis. The High Court in this third JR application, in dismissing the applicant's application, held that the respondent had not acted irrationally, disproportionately or illegally to warrant allowing the applicant's application for judicial review and the prayers sought. The two main grounds that arose herein were (i) the exclusive jurisdiction of the respondent's Senate to determine academic matters; and (ii) the applicant's non-compliance with the relevant Regulations, Rules and Guidelines in relation to his PhD thesis.

Held (dismissing appeal with costs)
Per Badariah Sahamid JCA (for the majority):

(1) The powers of the respondent and the respondent's Senate to award degrees as well as powers exercised in respect of academic matters are expressly provided for in ss. 4(1) and 17(2) of the Universities and University Colleges Act 1971 ('UUCA 1971'), First Schedule, Constitution. The powers of the Senate in respect of the conferment of PhD degrees is further reinforced by Regulations made pursuant to the UUCA 1971 *ie*, University of Malaya (Degree of Doctor of Philosophy) Rules 2007. From the foregoing, it was clear that the Senate has extensive powers in respect of academic matters. The Senate is legally empowered to be the governing body that is not just responsible for the conferment of degrees, but also tasked with the 'control and general

direction of instruction, research and examination' which includes the regulation of conduct of assessments and examination results and the formulation of policies in relation thereto. The Senate comprises leading academicians and administrative heads chaired by a Vice Chancellor, and is entirely consistent with the exclusive powers of the Senate to determine academic matters and in the instant case, if a particular thesis had satisfied the stringent requirements to be conferred a PhD degree. The maintenance of educational standards in any course of study, is in fact one of Senate's functions under UUCA 1971. (paras 75 & 77-79)

(2) The Senate, a body constituted under the UUCA 1971, has been conferred express powers of control and direction, and amongst others, to formulate policies in respect of instruction and research. The Guidelines, which amongst others, stipulate the date of a thesis to be the date of final submission has been adopted by the Senate to apply to all candidates of PhD programmes. This requirement of the current dating of a thesis is consistent with the maintenance of academic standards which is one of the functions that is legally empowered to the Senate. It was not open to courts to review the merits of such Guidelines or policies. On the facts of the instant case, the grounds for non-interference were strong as the decision was directly related to an academic matter *ie* the requirements to be satisfied by a PhD thesis in order to be conferred a PhD. The exclusive jurisdiction of a University to determine whether a candidate has satisfied the requirements to be conferred a degree is indisputably an academic matter not amenable to the supervision of the courts. (paras 81 & 82)

(3) In the previous two JR proceedings, the respective High Courts, in allowing the applications for JR to quash the decisions of the Senate in respect of the applicant's PhD thesis, had not only transgressed into the exclusive jurisdiction of the Senate in its decision to require the applicant to attend a second and subsequently a third *viva voce* for the examination of his thesis, as well as to make major corrections, but had usurped the power of the Senate by substituting the decision of the Senate to nullify the dubious results of the applicant's thesis submitted in 2006, and substituted their own decisions by compelling the Senate to confer a PhD on the applicant on the basis of compromised examiner reports in 2006, which had in fact been nullified by the Senate. The respective High Courts had erred in law in allowing the applications in the earlier two JR proceedings when the matter raised by the applicant was clearly an academic matter within the exclusive jurisdiction of the Senate and not subject to the supervision of the courts. The two previous JR applications should have been dismissed on this ground alone. (paras 93 & 95)

(4) The dating of a PhD thesis is stipulated by the Guidelines. It is entirely wrong to categorise the requirement as merely administrative or clerical. Since the dating related directly to a PhD thesis and the maintenance of the academic standards of a PhD thesis, and the Guidelines had been adopted by the Senate to apply to all PhD thesis, it was a matter within the exclusive jurisdiction of the Senate. It was not for this court to adjudicate on the merits of such a requirement. To allow this JR application would in effect be to perpetuate the errors of law of the respective High Courts in the two earlier JR proceedings. The courts had no jurisdiction to determine academic matters which were legally within the purview of the Senate, and the issue of the date of thesis was a matter within the academic judgment of the Senate. (paras 96 & 97)

(5) There was cogent and overwhelming evidence to support the decision of the respondent's Senate to fail the applicant's PhD thesis for his wilful non-compliance with the requirements stipulated by Senate, which included the attendance of a *viva voce* before the EC, the verification of corrections by the applicant's supervisor and the dating of the applicant's PhD thesis as 2017 instead of 2006. There were no good reasons to treat the applicant's case as an exceptional case. It was certainly not irrational or unreasonable for the respondent's Senate to fail the applicant's PhD thesis, as to do otherwise would not only contravene all established procedures and requirements in the relevant Statutes, Rules and Guidelines in respect of all PhD thesis and this would in turn undermine the credibility of degrees awarded by the respondent. (para 114)

(6) The applicant's unreasonable conduct in insisting that an exception be made to exempt him from the requirements applicable to all PhD candidates, that he be conferred a PhD on his own terms, probably motivated by pecuniary benefits, and seeking the court's orders to do so in not less than three JR proceedings must be strongly discouraged. A clear message needs to be sent that pursuant to relevant Statutes, Regulations and judicial precedents, all academic matters, including the requirements in Guidelines in respect of dating of a PhD thesis are within the exclusive jurisdiction of Senate and not subject to judicial scrutiny. Otherwise, courts would be inundated with failed and aggrieved candidates who run to the courts to examine their academic results and to confer them with their desired results or degrees, which unfortunately was what the applicant sought to do in no less than three JR proceedings. (para 15)

Per Mary Lim JCA (dissenting):

(1) The respondent is not a sacrosanct or omnipotent entity whose decisions are not subject to or is beyond the scrutiny of the court. The respondent is a statutory body established and incorporated under the University of Malaya Act 1961. Under s. 3 of the University of Malaya Act 1961, its Constitution known as the Constitution of the University of Malaya 1997 ('Constitution') has force of law. Like all such bodies, it functions as a public learning institution for higher education, where administrative, academic, disciplinary matters of students, staff, officers and employees of *quasi*-judicial character abound. Much of the respondent's affairs or business is regulated by statute, even the business of conferring academic distinctions. Sections 31(a) and 32 confer powers on the University's Board of Directors to make rules on the principles governing the award of degrees, diplomas and higher degrees. Pursuant to such powers, the Board of Directors enacted the Rules and the Regulations, which apply to all candidates, including the applicant who registered for the Degree of Doctor of Philosophy. Consequently, the exercise of any of its statutory powers is always justiciable and within the supervisory jurisdiction of the courts. The exercise of any particular power under consideration must always be within its prescribed limits. The respondent, without exception, did not have unfettered discretion and must exercise legal restraint at all times when exercising its powers. (paras 156-159 & 161-163)

(2) From the dictates of ss. 4(1)(c) and 22(5), the terms and conditions for the conferment of degrees, diplomas *etc*, are as prescribed by the Constitution, statutes, Rules and Regulations. Although the Senate is the specific body charged with the control and responsibility on the award of such degree, that mandate is also subject to the provisions of the Constitution, statutes, Rules and Regulations. It is only to the Constitution, Rules and Regulations that the conditions(s) imposed by the Senate must be examined. The Guidelines, however, do not fall within the meaning and scope of the 'provisions of the Constitution, statutes, Rules and Regulations'. The Guidelines do not have the force of law, operating more as general administrative Guidelines. The Guidelines were due to the 'initiative' of the IPS, intended to 'assist candidates to meet the minimal format requirements set out by the University to complete the final form of a research report, dissertation or thesis.' The Rules or Regulations must contain that basic requirement of printing the year of submission before the Guidelines may properly make that claim that it is drafted to assist candidates to 'meet the format requirements set by the University'. There was no such requirement, be it in the Rules or Regulations, leaving the Guidelines without any

authoritative force. Further, since the Guidelines were only issued in 2015 while the applicant commenced his academic session in 1996 and completed it in 2006, the Guidelines which the respondent relied on, did not apply to the applicant. (paras 167, 170 & 172-174)

(3) The applicant's thesis was never rejected but it would appear from the respondent's letter dated 2 May 2017 that it had passed the applicant subject to the condition that the final copies of the thesis be printed with the year 2017 as its year of submission was also without merit. A reading of reg. 19(14) showed that three copies of the thesis in print format as well as the electronic copy or version of the thesis are only prepared after the examination of the thesis and the final result. The format and requirement of these copies of the thesis could not form the subject of conditions for passing the PhD. These were matters ancillary or post examination and the final result. Regulation 19(14) does not require the year of submission to be printed or carried. The applicant had already passed his examinations and it was no longer open to the Senate to say otherwise on account of disagreements over the format of the thesis. These provisions of the Constitution, Rules and Regulations were firm and arguably mandatory on the submission requirements; but quite clearly, there were no provisions whatsoever on the printing of any date of the thesis. Indeed, if the date of the publication is critical or absolutely vital to the success or failure of a candidate, surely such a requirement must be expressly and clearly stipulated in the Regulations. The stark absence of this requirement confirmed that the respondent's ground for failing the applicant was very much wanting and was clearly devoid of merit. (paras 179 & 180).

(4) The conduct of the respondent clearly illustrated utter refusal of the respondent to confer upon the applicant the PhD despite his successful and meritorious completion of the most important component of the degree which surely must be its academic content. A proper reading of these Rules and Regulations showed that the Senate and thereby the respondent was not entitled to deny the applicant his PhD where he had satisfied all the requirements set down by the Rules and Regulations. Any requirement in the terms now required by the Senate must have been indicated early or contemplated at the commencement of the course, and not at or upon the completion of the course. This changing of goalposts reeked of unfairness and injustice. Further, the Senate played a role of approving the conferment of the PhD which it could not do without the recommendations of the Committee. Conversely, the Senate could not unreasonably and without proper grounds, either withhold or refuse to approve where the Committee had recommended conferment. The Senate was not entitled to approve the conferment of

A the PhD on the terms that it had set; more so when the Committee had already recommended that the applicant be conferred a PhD. Where the applicant had satisfied the requirements in reg. 36, as it did in the circumstances of this appeal, under r. 14, the respondent shall confer the Degree of Doctor of Philosophy on the applicant. (paras 184-186 & 189)

B **(5)** It was erroneous on the part of the trial judge to find that the Senate and thereby the respondent had exclusive power to confer the PhD on the applicant. It had power, no doubt, but it was not exclusive to the extent that it was beyond the scrutiny of the court. It is a statutory power which is not unbridled. Instead, it is circumscribed with terms and conditions.
C This statutory power must thus be exercised according to the law as passed. The respondent had not exercised its powers in accordance with the relevant statutory provisions, and such decisions must be quashed and the appropriate remedies ordered. The chequered history and for the reasons relied on by the respondent to deny the applicant his PhD after
D 11 years, through no fault of his but entirely that of the respondent, was appalling and deplorable. (paras 190 & 191)

(6) The applicant's reasons of the inaccuracy and impact of such dating would bring to the integrity of his thesis not only made good sense but were valid and reasonable concerns. The applicant's thesis submitted in
E 2006 could not be ignored as the first *viva voce* was over that one and only thesis. The respondent had been totally inconsistent on the question of whether minor or major corrections were called for by the Committee. In the first judicial review proceedings, the Committee first concluded that the applicant's thesis only required minor corrections
F whereas in the second judicial review proceedings, major corrections were required. Yet, when it came to the third judicial review proceeding, once again, it was minor corrections. This suggested a presence of arbitrariness and put the respondent's conduct under the microscope, and where its delay in action, responding to a thesis which
G had already undergone a successful *viva voce* remained until this day, unattended to until and unless pushed, without conscience. On a true analysis, this was a case of challenge of failure to observe process as laid down in the Rules and Regulations by the respondent. Such a challenge is eminently suited for scrutiny by the court and the court must never shy away from such tasks. (paras 193, 194 & 197)

H

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Case(s) referred to:

Akira Sales & Services (M) Sdn Bhd v. Nadiah Zee Abdullah & Another Appeal [2018] 2 CLJ 513 FC ***(refd)***

Associated Picture Houses Ltd v. Wednesbury Corp [1948] 1 KB 223 ***(refd)***

Council of Civil Service Unions & Ors v. Minister for Civil Service [1985] AC 374 ***(refd)***

Dr Amir Hussein Baharuddin v. Universiti Sains Malaysia [1989] 1 LNS 76 HC ***(refd)***

Dr Chandra Muzaffar v. University Malaya [2002] 2 CLJ 448 HC ***(dist)***

Patel v. University of Bradford Senate [1978] 1 WLR 1488 ***(refd)***

Pengarah Tanah Dan Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd [1978] 1 LNS 143 FC ***(refd)***

R (on the application of Clarke) v. Cardiff University [2009] EWHC 2148 ***(dist)***

R (on the application of Persaud) v. Cambridge University [2001] EWCA Civ 534 ***(dist)***

R Rama Chandran v. Industrial Court Of Malaysia & Anor [1997] 1 CLJ 147 FC ***(refd)***

Rex v. Dunsheath ex parte Meredith [1951] 1 KB 127 ***(refd)***

Thorne v. University of London [1966] 2 All ER 338 ***(refd)***

Legislation referred to:

Constitution of the University of Malaya, ss. 4(1)(c), 21(13), 22(5)

Universities and University Colleges Act 1971, s. 25, First Schedule ss. 4(1), 17(2), 18

University of Malaya Act 1961, s. 3

For the appellant - Shireen Selvaratnam & Lim Wei Jiet; M/s Sreenevasan
For the respondent - Porres Royan & Edwin Tan; M/s Tuck-Jeong & Lee

[Editor's note: For the High Court judgment, please see Sivapalan Govindasamy v. Universiti Malaya [2016] 1 LNS 987 (affirmed).]

Reported by Suhainah Wahiduddin

JUDGMENT

Badariah Sahamid JCA (majority):

Introduction

[1] This is an appeal against the decision of the High Court in Kuala Lumpur dated 14 May 2018, which dismissed the applicant's application for judicial review with costs.

[2] My learned brother Ahmadi JCA and myself affirmed the decision of the learned High Court Judge and dismissed the appeal with costs, while my learned sister, Mary Lim Thiam Suan JCA held a dissenting view.

Judicial Review Application

[3] The application for judicial review had sought primarily for the following relief:

A (i) *certiorari* to quash the conditions imposed by the respondent in its decision contained in its letter dated 2 May 2017 where, having agreed to confer on the applicant the Degree of Doctor of Philosophy, ('PhD') it required the applicant to submit his final thesis with a publication date in 2017;

B (ii) *certiorari* to quash the decision made by the respondent contained in its letter dated 23 June 2017 for failing the applicant ('gagal keluar') in the Degree of Doctor of Philosophy merely on the basis that the applicant failed to submit his thesis with a publication date in 2017;

C (iii) a declaration that it was neither reasonable, rational nor proportionate for the respondent to fail the applicant entirely from the Degree of Doctor of Philosophy ('gagal keluar') merely on the basis that his final thesis was printed with a publication date of 2006 instead of 2017;

(iv) a declaration that the Guidelines of the respondent governing the dating of the final thesis of a candidate are directory in nature and should not D result in the applicant failing ('gagal keluar') his Degree of Doctor of Philosophy when the respondent has agreed that his thesis has academic merit to be awarded the Degree of Doctor of Philosophy;

(v) a declaration that the applicant is entitled to date his thesis in 2006;

E (vi) a declaration that the applicant be conferred the Degree of Doctor of Philosophy without the condition that his final thesis be specifically printed with the publication date 2017.

Issues Before Us

F **[4]** At the outset, it is important to note that from the applicant's submissions and prayers in his third JR application, the applicant would have us believe that the issue before us is the unreasonable action of the respondent's Senate to fail the applicant's PhD thesis for the 'trivial' reason (the applicant's words) of the mere dating of his PhD thesis (2006 instead of G 2017), when his thesis had achieved sufficient academic merit to be awarded a PhD. This oversimplification of the issue before us is not only misleading but erroneous, as it fails to take into consideration the facts and circumstances in the earlier two JR proceedings which has a direct bearing to and had led to the third JR, which is on appeal before us. Thus, it is important to be apprised of the earlier two JR proceedings, which the learned H High Court Judge ('learned judge') in the third JR aptly did in his judgment.

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Background Facts

[5] A summary of the background facts are derived from the learned judge's 'judgment', with suitable modifications. The narration of the background facts is necessarily lengthy as they traverse primarily the years 2006 to 2017 and three applications for judicial review ('JR') by the applicant to challenge the decisions of the respondent in respect of the same applicant's PhD thesis. For ease of reference, parties will be referred to as they were in proceedings before the High Court.

[6] At the outset, it is worthy of note that the instant appeal arose from the third JR application instituted by the applicant against the respondent in respect of the Doctor of Philosophy program undertaken by the applicant with the respondent. While all three JR proceedings relate to the same PhD thesis, in his third JR application, the focus of the prayers sought by the applicant is for a declaration that the applicant be conferred a PhD with the publication date of 2006 instead of 2017, which is the date required under the 'Guidelines for The Preparation of Research Reports, Dissertations and Thesis' ('the Guidelines'), of the respondent.

[7] The applicant was a senior lecturer in the Department of Indian Studies, Faculty of Arts and Social Science, University of Malaya.

[8] The respondent is a public university established under the Universities and University Colleges Act 1971 ('UUCA 1971').

[9] On 16 October 1996, the applicant had registered with the respondent as a candidate for the Doctor of Philosophy ('PhD'). The topic of his PhD thesis is 'the Philosophy of the Cittars'. After approximately nine years after registration of his PhD, the applicant submitted his thesis to the respondent on 20 March 2006.

[10] The respondent forwarded the applicant's thesis for examination to three examiners as follows:

(i) Two external examiners from India: Dr. Moses Michael Faraday ('Faraday') and Dr. K IIamathy Janakiraman ('IIamathy'); and

(ii) One internal examiner, Professor Dr. Rajantheran a/l Muniandy ('Rajantheran') from the Department of Indian Studies, University of Malaya. Rajantheran was a colleague of the applicant.

[11] All three examiners, in their reports had recommended that the applicant be awarded a PhD. Subsequently, according to the usual procedure, a *viva voce* of the applicant's PhD thesis was held on 28 September 2006. The *viva voce* was attended by the applicant and by the following members of the examination committee ('EC'):

(i) Professor Dato' Dr Mohammad Raduan bin Mohd. Ariff, ('Raduan') Dean of the Faculty of Social Science and Chairman of EC;

(ii) Professor Dato' Dr Mohammad Redzuan bin Othman, ('Redzuan') Deputy Dean of the Faculty of Social Science;

(iii) Associate Professor Dr M Rajantheran ('Rajantheran') as internal examiner;

(iv) Associate Professor Dr S Kumaran ('Kumaran') as the Head of Department and Coordinator of Program;

(v) Professor Dr Hamzah Abdul Rahman, ('Hamzah') as a representative of Senate;

(vi) Professor Dr N Kanthasamy ('Kanthasamy') as the first supervisor of the applicant.

[12] At the conclusion of the *viva voce* held on 28 September 2006 that was attended by the applicant, the EC decided that the applicant's PhD thesis had achieved sufficient academic merit to be awarded a PhD subject to the applicant making minor corrections, without re-examination, as recommended by the examiners, within a period not exceeding six months and verified by the supervisor/internal examiner. The report of the EC reads (in Bahasa Malaysia) as follows:

> Calon telah mencapai merit akademik yang cukup untuk dianugerahkan Ijazah tertakluk kepada beliau membuat pembetulan minor tanpa pemeriksaan semula sepertimana disarankan oleh pemeriksa dalam tempoh tidak melebihi 6 bulan dan disahkan oleh Penyelia/Pemeriksa Dalam.

[13] Subsequent to the abovementioned *viva voce*, Redzuan noticed there were suspicious circumstances in the reports of the two external examiners which raised issues as to their credibility. Redzuan reported his observations to the then Vice-Chancellor of the respondent, who then directed Redzuan and the applicant's then supervisor, Kanthasamy to leave for India to investigate both the external examiners, Faraday and IIamathy.

[14] As a result of the investigation, Redzuan prepared a confidential report on his visit to Chennai, which report was handed to the then Vice Chancellor *via* a letter dated 22 November 2006. In the said report, Redzuan had listed doubts regarding the credibility of both of the external examiners' report, which contained the following similarities:

(i) use of the respondent's letterhead;

(ii) similarities in language and sentence construction;

(iii) use of similar type and size of font;

(iv) each page bore a stamp at the bottom right and signature in green ink;

(v) the same spelling mistakes; and

(vi) use of the same kind of paper.

[15] In addition, amongst the findings of the visit to Chennai were as follows: Professor IIamathy had acknowledged that the examination report was written in English, when she can neither read or write in English. Dr. Faraday also disagreed with the methodology of conclusions made by the applicant in his thesis. One of the findings was that there was suspicion of collusion between Faraday, IIamathy and Rajantheran in the preparation of the examiners' reports.

[16] As a result of the above findings, Redzuan's confidential report to the Vice Chancellor had recommended that both the external and the internal examiners' reports be rejected and that the applicant be re-examined by new external and internal examiners.

[17] On 22 March 2007, the Senate at a meeting agreed to the following:

(i) reject the reports of the external and internal examiners as well as the decision of the EC on 28 September 2006 that the thesis of the applicant, Sivapalan a/l Govindasamy had achieved sufficient merit to be awarded a PhD, subject to the requirement to make corrections as recommended by supervisor and to be verified by the Head of Department in a period not exceeding six months.

(ii) appointment of new external and internal examiners to examine the applicant's thesis and to conduct a board of examiners meeting after the receipt of the new examiners' reports.

[18] Subsequently, in a letter by the respondent dated 4 December 2009, issued to the applicant, the respondent amongst others, informed the applicant that the result of the *viva voce* that was held on 28 September 2006 in respect of the Doctor of Philosophy, was nullified as a meeting of Senate had rejected the reports of the external and internal examiners. The applicant was also required to attend a *viva voce* on 10 December 2009.

[19] The applicant refused to attend the *viva voce* of 10 December 2009, following which the respondent in a letter dated 24 December 2009 informed the applicant that the Senate on 17 December 2009 had decided that the applicant had failed his PhD examination and was not allowed to resume the PhD program.

The First Judicial Review

[20] The applicant then filed an application for judicial review (the first JR) to challenge the decision abovementioned. The prayers sought by the applicant were as follows:

(i) *certiorari* to quash the respondent's decisions contained in the letters dated 4 December 2009 and 24 December 2009;

(ii) declaration that the decision of the *viva voce* on 28 September 2006 is valid and enforceable.

(iii) *mandamus* to compel the respondent to confer the PhD on the applicant based on the oral results in the *viva voce* on 28 September 2006; and

(iv) *mandamus* to compel the respondent to pay all benefits, including salary increments from 2006, based on the results of the *viva voce* on 28 September 2006.

[21] In the first JR, the respondent had only filed a single affidavit in reply, which, among others had averred that the EC had discovered, "salah aturan", without giving particulars of the background of the respondent's decisions *via* its letters dated 4 December 2009 and 24 December 2009, or the confidential report by Dr. Redzuan in respect of suspicions on the credibility of the reports of the external and internal examiners.

[22] In the first JR, the learned High Court Judge, Dato' Rohana Yusof (as she then was) on 27 September 2011 had held as follows:

(i) allowed the applicant's prayer for *certiorari* to quash the respondent's decisions in its letter dated 4 December 2009 which nullified the *viva voce* of 28 September 2009, and the letter of 24 December 2009 which decided that the applicant had failed his PhD.

(ii) dismissed the applicant's prayers for:

(a) a declaration that oral decision of the *viva voce* on 28 September 2006 is valid and enforceable;

(b) a *mandamus* to compel the respondent to confer the PhD degree on the applicant based on the oral decision of the *viva voce* on 28 September 2006;

(c) a *mandamus* to compel the respondent to pay all benefits, including salary increments from 2006.

[23] Although dissatisfied with the learned High Court Judge's decision to quash the respondent's decisions *via* letters dated 4 December 2009 and 24 December 2009, the respondent did not appeal against the High Court's decision. The applicant also did not appeal against the learned High Court's decision to dismiss his other prayers.

[24] The respondent by letter dated 11 March 2014 directed the Institut Pengajian Siswazah (IPS) to take the following measures to process the applicant's thesis: form a new EC, appoint two new external examiners and one new internal examiner and require the applicant to attend a *viva voce.*

[25] On 12 March 2015, the respondent's Senate set a *viva voce* date on 16 March 2015 and directed the applicant to attend the *viva voce*. As the respondent regarded the applicant's case as a special case, the respondent's letter dated 12 March 2015 informed the applicant that his attendance was not mandatory, although his attendance was advised in order to defend his thesis.

[26] The applicant did not attend the *viva voce*. No reasons were given for the non-attendance. On 16 March 2015, in the applicant's absence, the EC proceeded with the *viva voce* and decided as follows:

(i) the applicant's thesis required major corrections which have to be submitted by 15 September 2015; and

(ii) if the applicant failed to do so, the applicant will fail the PhD.

[27] The decision of the EC abovementioned was communicated to the applicant *via* a letter from the respondent dated 16 March 2015.

The Second Judicial Review

[28] The applicant challenged the decision of the EC abovementioned in his second application for judicial review ('second JR'). At the second JR, the applicant prayed for the following orders:

(i) A *certiorari* to quash the respondent's decision dated 11 March 2014, which required the applicant to attend the second *viva voce* on 16 March 2015 in respect of his thesis.

(ii) A *certiorari* to quash the respondent's decision in its letter dated 12 March 2015, which required the applicant to attend the *viva voce* on 16 March 2015.

(iii) A *certiorari* to quash the respondent's decision in its letter dated 16 March 2015, which required the applicant to make major corrections to his thesis.

(iv) As an alternative to prayers (i), (ii) and (iii) above-mentioned, a declaration that the respondent's decisions *via* its letters dated 11 March 2014, 12 March 2015 and 16 March 2015 had contravened the High Court decision on 27 September 2011, and are therefore invalid.

(v) A declaration that in line with the High Court decision on 27 September 2011, there is no basis or power for the respondent to declare the first *viva voce* held on 28 September 2006 as invalid.

(vi) An order to prohibit the respondent from subsequently calling any *viva voce* in relation to the applicant's PhD thesis.

(vii) A declaration that the respondent to proceed to make a decision in relation to the applicant's PhD thesis based on the following:

(a) the thesis submitted on 20 March 2006;

(b) the reports of the external and internal examiners on the applicant's thesis; and

(c) the opinion of the EC after the first *viva voce* held on 28 September 2006.

(viii) A *mandamus* to compel the respondent to make the abovementioned decision within two months from the date of this order.

(ix) A *mandamus* to compel the respondent to give to the applicant all employment benefits, including arrears of salary increments from two months or such other reasonable period after the *viva voce* held on 28 September 2006.

(x) Award of damages, including aggravated and exemplary damages to be assessed.

[29] In this second JR, the respondent had filed affidavits in reply which gave particulars, amongst others, of surrounding issues and facts as well as circumstances that led to the *viva voce* dated 28 September 2006 to be declared a nullity and the rejection of the reports of the external and internal examiners in respect of the applicant's thesis.

[30] At the hearing of the second JR, the learned High Court Judge, Datuk Hanipah binti Farikullah (as she then was) had allowed the following prayers of the applicant:

(i) a *certiorari* to quash the respondent's decision dated 11 March 2014, which required the applicant to attend the second *viva voce* in relation to his thesis;

(ii) a *certiorari* to quash the respondent's decision in its letter dated 12 March 2015 which required the applicant to attend a *viva voce* on 16 March 2015;

(iii) a *certiorari* to quash the respondent's decision in its letter dated 16 March 2015, which required the applicant to make major corrections to his thesis;

(iv) a declaration that in accordance with the decision of the High Court on 27 September 2011, there is no basis or power for the respondent to declare the first *viva voce* held on 28 September 2006 as invalid;

(v) prohibition to prevent the respondent from subsequently calling any *viva voce* in relation to the applicant's thesis; and

(vi) a declaration that the respondent to proceed to make a decision on the applicant's PhD degree based on the thesis submitted on 20 March 2006 and the reports of the external and internal examiners in relation to the said thesis, and the opinion of the EC after the first *viva voce* on 28 September 2006, and a *mandamus* to compel the respondent to make the abovementioned decision within two months from the date of the order.

[31] However, the learned judge in this second JR dismissed the applicant's prayers as follows:

(i) a *mandamus* to compel the respondent to provide the applicant all employment benefits including arrears of salary increments from two months or such other reasonable period after the *viva voce* held on 28 September 2006; and

(ii) an award of damages, including aggravated and exemplary damages to be assessed.

[32] Upon clarification with the learned judge on some ambiguity relating to certain orders in respect of the *viva voce* on 28 September 2006, Her Ladyship clarified that the position taken by the High Court was that the applicant had passed subject to minor corrections as stated in the decision of the EC on the same date.

[33] In accordance with the order of the High Court which directed the respondent to make a decision in relation to the PhD degree of the applicant based on the thesis submitted by applicant on 20 March 2006, the reports of the external and internal examiners as well as the opinion of the EC after the *viva voce* on 28 September 2006, the Dean of IPS, Professor Dr. Abrizah Abdullah, had informed the applicant of the decision of a meeting of Senate on 29 September 2016 *via* letter dated 30 September 2016.

[34] The Senate's decision referred to the recommendation of the EC on 28 September 2006 in which the applicant was required to make corrections to his thesis within six months from the date of Senate and such corrections to be verified by the supervisor of the applicant's thesis and to be submitted latest by 28 March 2017. The abovementioned letter is reproduced below:

A UM.H9 SO/606/AFD 9603

30 September 2016

Sivapalam Govindasamy
Jabatan Pengajian India
Fakulti Sastera dan Sains Sosial

B

Tuan,

Keputusan Peperiksaan Tesis Doktor Falsafah

Dengan hormatnya saya merujuk kepada perkara di atas.

C Adalah dimaklumkan bahawa Senat Universiti pada 29 September 2016, berdasarkan perakuan Jawatankuasa Pemeriksa pada 28 September 2006, telah MEMUTUSKAN bahawa tuan mencapai merit akademik yang mencukupi untuk dianugerahkan Ijazah Doktor Falsafah **tertakluk** kepada tuan membuat pembetulan seperti mana disarankan oleh Pemeriksa, dalam tempoh tidak melebihi **(6) bulan dari Tarikh Senat** dan disahkan oleh **Penyelia.**

D

Sehubungan itu, tuan dikehendaki menyerahkan tesis akhir dengan pengesahan oleh Penyelia selewat-lewatnya pada **28 Mac 2017** kepada Unit Tesis, Institut Pengajian Siswazah mengikut prosedur yang ditetapkan. Bersama-sama ini, dilampirkan yang berikut untuk Tindakan tuan selanjutnya:

E

(a) Salinan laporan daripada Pemeriksa

(b) Borang Laporan Pembetulan Tesis

(c) Borang penyerahan Akhir Tesis

F Senat Universiti turut memutuskan bahawa Penyelia baharu yang akan dikenalpasti dilantik untuk menyelia tuan didalam kerja-kerja pembetulan tesis serta mengesahkan pembetulan tersebut dibuat mengikut saranan Pemeriksa. Ini adalah kerana Penyelia tuan telah tamat perkhidmatan di Universiti atas sebab bersara dan tidak meneruskan khidmat sebagai ahli akademik. Perlantikan ini akan dimaklumkan kepada tuan dalam masa yang terdekat.

G

(emphasis added)

[35] In accordance with Senate's decision, the respondent then appointed Dr. Hanafi Husin as the new supervisor for the applicant's PhD thesis, as the applicant's previous supervisor, Dr. N. Kanthasamy had retired by then.

H **[36]** Subsequently, Dr. Hanafi informed the applicant of the appropriate minor corrections, which were recommended corrections in respect of the formatting of the thesis only ie, spacing and font etc. The applicant duly carried out these minor corrections and forwarded the same to Dr. Hanafi.

I

[37] In the course of the applicant's communications with IPS, he was informed by IPS that his thesis must be dated 2017. The applicant however was adamant that his thesis be dated 2006, as he claimed that he would suffer prejudice in terms of his academic credibility if the thesis were to be dated 2017 as the research undertaken for his thesis was up to 2006 only. He appealed for his case to be treated as a 'kes khas' (special case) because of the particular circumstances of his case.

[38] Dr. Hanafi informed the applicant that he would not verify the corrections on his thesis unless he complied with the directions of Senate and IPS to date his thesis 2017.

[39] On 28 March 2017, the applicant submitted his thesis dated 2006, without verification from his supervisor, Dr. Hanafi. At first, IPS had rejected the applicant's thesis on the grounds that its submission was not in accordance with Senate's decision on 29 September 2016. However, the applicant had appealed for his thesis to be treated as a 'kes khas'. IPS then forwarded the applicant's request to Senate for consideration.

[40] On 2 May 2017, Senate informed the applicant that the dateline to submit his thesis was extended to 27 May 2017. The thesis must be verified by his supervisor and dated 2017. The applicant refused to accede to the requirements set by Senate, in spite of reminders by IPS.

[41] On 23 June 2017, IPS informed the applicant that the Senate at its meeting dated 23 June 2017 had decided that the applicant had failed his PhD for the reason that he had failed to submit his final thesis with the date 2017 within the stipulated period, as determined by Senate.

Parties' Submissions

[42] The parties' submissions in respect of the third JR before the learned High Court Judge, Nordin bin Hassan, and addressed by His Lordship in His 'judgment' may be summarised as follows.

The Applicant's Submissions

[43] There are no provisions, including the University Regulations (PhD) 2007 which stipulate that a PhD thesis publication date must be the year of final submission of thesis. The respondent cannot rely on the 'Guidelines for The Preparation of Research Reports, Dissertations and Thesis', as the power of Senate is subject to its Rules and Regulations.

[44] In addition, where the applicant has achieved sufficient academic merit to be awarded a PhD, it is unreasonable, irrational and illegal for the respondent to reject the applicant's thesis merely on the grounds of the date of the thesis. The applicant has a legitimate expectation to be awarded a PhD.

[45] If the applicant's thesis were to be dated 2017, since the materials only reflect developments in the area up to 2006, this would render the thesis outdated and unreliable as a source for other publications. This would compromise the applicant's credibility and reputation as an academician.

The Respondent's Submissions

[46] The crux of this appeal relates to the date of publication of the applicant's thesis. The applicant's prayers for his thesis to bear the publication date of 2006 is *res judicata* as from the first to the second JR, the applicant was aware of the practice of the respondent that a thesis bears the year of its final submission, when the thesis is ready for Senate's endorsement. However, the applicant failed to raise this issue in the first and second JR. The applicant is precluded from raising this issue in this JR on the principle of *res judicata*.

[47] While it is true that the EC on 28 September 2006 had decided that the applicant's thesis had achieved sufficient academic merit to be awarded a PhD, the decision of EC had also stipulated that the applicant's thesis is nevertheless subject to corrections according to procedures stipulated. Thus, the issue of legitimate expectation does not arise.

[48] It would be unreasonable for the year of the publication of the thesis to be 2006 because 2006 was the year the thesis was submitted for examination. Even at the stage of the *viva voce* on 29 August 2006, the applicant's thesis was still subject to corrections and had not yet been put in a finalised state so as to be ready to be endorsed by Senate.

[49] The power to confer PhD degrees is vested in the respondent. This has been expressly acknowledged by both the learned High Court Judges in the first and second JR applications. This is a matter within the exclusive jurisdiction of the respondent's Senate.

The Decision Of The High Court

[50] The findings and decision of the learned judge in this third judicial review application, can be summarised as follows.

[51] The Constitution of the University of Malaya (s. 4(1)(c) and s. 22(5)) vests the respondent and Senate with the exclusive jurisdiction to confer degrees upon students who have followed any approved courses of study and have satisfied other requirements prescribed by rules. In this respect, subject to the Constitution, statutes, rules and regulations, Senate has expressly been given the power of control and general direction of research and examination as well as the award of degrees and other academic distinctions.

[52] The PhD program is a long drawn out process that is governed not only by the abovementioned statutes and Guidelines but also specific requirements under the University Malaya Regulations (PhD degree) 2007. Essentially, a PhD program undergoes the following process:

(i) Registration by candidate;

(ii) Appointment of supervisor of candidate;

(iii) Preparation of thesis by candidate and submission to external and internal examiners appointed by the respondent;

(iv) Examiners' reports;

(v) *Viva voce* before the examination committee; and

(vi) Presentation before the Senate for endorsement.

[53] In addition, all candidates, including the applicant are subject to the "Guidelines for the Preparation of Research Reports, Dissertations, and Thesis 2015", which amongst others, stipulate the year of thesis must be the year of submission of thesis, which in the case of the applicant is 2017 and not 2006.

[54] The year 2006 cannot be the year of publication of thesis because while the *viva voce* was held on 28 September 2006 and the EC had decided that the applicant's thesis had achieved sufficient academic merit, the award of PhD by Senate was subject to the applicant making minor corrections to his thesis within a period of six months of the *viva voce* and, such corrections to be verified by the applicant's supervisor and dated as of date of final submission. It is only on completion of the above that the applicant's thesis would be in a state of final submission, ready to be endorsed by Senate. It is not disputed that in 2006, the applicant's thesis was not yet in a state of final submission and consequently, his thesis cannot be dated 2006.

[55] The applicant's contention that dating his thesis in 2017 when his source materials were only up to 2006, would compromise his academic reputation is unfounded as the abovementioned limitation can be incorporated in the abstract or introduction to his thesis.

[56] The exclusive jurisdiction of the respondent's Senate to confer degrees was expressly acknowledged by the two learned High Court Judges in the first and second judicial review applications. Thus, the applicant is precluded from raising issues which were determined in the previous two judicial review applications by the doctrine of *res judicata*.

[57] The respondent has not acted irrationally, disproportionately or illegally to warrant allowing the applicant's application for judicial review and the prayers sought.

A **The Applicant/Appellants Submissions**

[58] The crux of the applicant's argument before us is that the subject matter in dispute is the date of the thesis, which is not an academic matter and therefore not within the exclusive jurisdiction of the respondent and Senate. The dating of a thesis is purely administrative/clerical in nature and
B thus can be subject to judicial scrutiny. Learned counsel for the applicant argues further that in the previous two judicial review proceedings, the disputes concern matters which were more within the academic sphere eg, the attendance at *viva voce*, and the decision of the EC, yet the High Courts had intervened to allow the applications. Thus, it was argued there is all the
C more reason that the issue of dating of a thesis is a matter within the purview of the courts.

[59] In support of the above contention, learned counsel for the applicant made reference to the following judicial precedents where the courts had intervened in the decisions of universities: *Dr. Chandra Muzaffar v. University*
D *Malaya* [2002] 2 CLJ 448; [2002] 5 MLJ 369; *Rohana bte Ariffin & Anor v. Universiti Sains Malaysia; R (on the application of Clarke) v. Cardiff University* [2009] EWHC 2148; *R (on the application of Persaud) v. Cambridge University* [2001] EWCA Civ 534.

E **[60]** Further, the argument forwarded by the applicant was the absence of specific provisions in both the University of Malaya (Degree of Doctor of Philosophy) Regulations 2007, and the University of Malaya (Degree of Doctor of Philosophy) Rules, which stipulate that the publication date of a PhD thesis must be the year of submission of thesis. Thus, the publication date of a thesis was never contemplated as a requirement for submission of
F a PhD thesis.

[61] A submission of a thesis is governed by the 2007 Regulations. Regulation 19(11) of the Regulations provides as follows:

> (11) Any thesis submitted for examination shall be in accordance with the
G regulations and procedures prescribed under these Regulations or any amendments thereof as may be made from time to time. The Dean of the Faculty may reject any thesis not submitted in accordance with any prescribed regulations and procedures.

[62] In the light of the above provisions, the learned High Court Judge had
H erred in His Lordship's reliance on the "Guidelines for the Preparation of Research Reports, Dissertations, and Thesis 2015, which amongst others, stipulate the year of thesis must be the year of submission of thesis. The Guidelines are not mandatory but directory in nature and an exception can be made in the circumstances of this case.

I

[63] The particular facts of the applicant's case can be treated as a 'kes khas'. This is provided for in s. 13 of the 'Polisi Penyeliaan Pelajar Ijazah Tinggi Universiti Malaya' which states as follows:

> Sekiranya pelantikan penyelia baru diperlukan atas sebab-sebab tertentu, pelantikan boleh dibuat mengikut merit dan kes ini dianggap sebagai kes khas. Kes ini tidak boleh dirujuk dan menjadi teladan bagi kes-kes yang akan datang.

[64] The applicant argued further that should the applicant's PhD thesis be dated 2017 instead of 2006. The applicant's integrity and academic reputation would be severely compromised as the source materials referred to in the applicant's PhD thesis only reflect developments in the field of the philosophy of cittars up to the year 2006. This would result in the applicant's thesis being outdated and would not therefore serve as source material for other publications. This would in turn affect the credibility of the respondent in allowing the publication of an outdated thesis.

[65] The undue delay in the submission of the applicant's thesis, resulting in an almost 11-year gap between 2006 and 2017, was not caused by the fault of the applicant but was due to protracted litigation between the parties in respect of the applicant's PhD thesis. Following the High Court decision dated 27 September 2011 which in effect nullified the decisions of the respondent *vide* its letters dated 4 December 2009 and 24 December 2009, the respondent after a delay of almost three years, only informed the applicant by a letter dated 11 March 2014 of Senate's decision to direct IPS to take measures to process his PhD thesis. No explanation for the delay was provided by the respondent.

[66] The learned judge had also erred in holding that the instant suit is barred by *res judicata* in the two previous judicial review proceedings, which held that the decision to award a PhD remains with the respondent and any matters relating to the applicant's PhD had already been finally determined and cannot be revisited by the courts. The issue of the dating of the applicant's thesis had not yet arisen then and was therefore not put before the respective High Courts for determination. In any event, *res judicata* is an equitable principle and cannot be relied on when it would result in unfairness and injustice, as it would in the circumstances of this case.

[67] In arriving at his decision to dismiss the applicant's third judicial review application, the learned High Court Judge had relied on irrelevant considerations. In particular, the learned High Court Judge had regarded as 'fakta-fakta material' the facts and in particular the report of Dr Redzuan on the doubtful authenticity of the external and internal examiners' reports in respect of the applicant's thesis, and the subsequent decision of Senate to reject the said examiners' reports and appoint new examiners. At paras. 4

(vii) to (xii) and (xvi) of the learned judge's 'judgment'. Such facts were not produced by the respondent in the first JR proceedings and was not considered by the learned judge in the second JR proceedings.

[68] In conclusion, it was argued that since the applicant's PhD thesis had achieved sufficient academic merit to be awarded a PhD, (as confirmed by the results of the *viva voce* of 29 August 2006, as well as the respondent's letter to the applicant dated 30 September 2016 and 2 May 2017), it would be unreasonable, irrational and wrong in law to fail the applicant merely because of the date of the applicant's thesis. The applicant had worked very hard to complete his thesis and to fail or 'gagal keluar' the applicant would result in substantial injustice to the applicant.

Our Decision

[69] At the outset, we wish to state that by a majority of 2-1, we find no appealable error in the learned High Court Judge's findings of fact or application of law to warrant appellate intervention. Accordingly, we dismissed this appeal with costs and affirmed the decision of the learned High Court Judge. In view that this is a majority decision, in an area of some significance, we give the grounds of our decision below.

[70] In our considered view, there are two main grounds to dismiss the applicant's appeal; each ground in itself is sufficient to dispose of this appeal, but for completeness we will address each ground in turn. They are: First, the exclusive jurisdiction of the respondent's Senate to determine academic matters; and second, the applicant's non-compliance with the relevant regulations, rules and Guidelines in relation to his PhD thesis.

[71] It is beyond dispute that a PhD degree represents the highest academic achievement in the respective fields of study. In line with its status, the conferment of a PhD degree to a successful candidate is subjected to rigorous requirements and procedures that have to be adhered to, not just by the candidate but persons and authorities directly involved in the PhD program, in particular, the supervisor of the PhD thesis, the external and internal examiners, the examination committee as well as Senate which is the body vested with the power to endorse or fail a PhD thesis, in accordance with the relevant regulations, rules and Guidelines. The adherence to such requirements is necessary for the due maintenance of educational standards, which is one of the functions of Senate under the relevant statutes, rules and regulations.

The Exclusive Jurisdiction Of Senate To Determine

Academic Matters

[72] This leads us to the primary ground to dismiss this appeal: the issue of the exclusive jurisdiction of the respondent's Senate to confer degrees as well as to make decisions on academic matters.

Powers Of Respondent And Senate

[73] In all three JR proceedings, the respective High Courts had expressly acknowledged that it is the respondent and the respondent's Senate which has the exclusive powers to confer degrees. This is provided for in the Universities and University Colleges Act 1971 (UUCA 1971).

[74] The Senate, is comprised of the following members:

The Senate

17(1) The Senate shall consist of:

(a) the Vice-Chancellor, who shall be Chairman;

(b) all Deputy Vice-Chancellors;

(c) all Deans of the Faculties and all heads of the Campuses, Schools, Centres, Academies and Institutes of the University;

(d) not more than twenty professors to be elected for a term of 3 years by all full-time professors and associate professors of the University; and

(e) not more than five persons from the University to be co-opted by the Vice Chancellor for a term of 3 years.

[75] The powers of the respondent and the respondent's Senate to award degrees as well as powers exercised in respect of academic matters are expressly provided for in ss. 4(1) and 17(2) of the UUCA 1971 under First Schedule of the Constitution which reads as follows:

Powers of the University

4(1) The University shall, subject to the provisions of this Constitution, have the following powers:

(a) to provide courses of instruction, to hold examinations, to make provisions for research, and to take such other steps as may appear necessary or desirable for the advancement and dissemination of knowledge.

(b) *to confer degrees, diplomas, certificates and other academic distinctions including external degrees, diplomas, certificates and other academic distinctions upon students who have followed any of the approved courses of study and have satisfied other requirements as may be prescribed by rules.* (emphasis added)

The Senate

17(2)The Senate shall be the academic body of the University and, subject to the provisions of this Constitution, the Statutes, Rules and Regulations, shall have the control and general direction of instruction, research and examination, and the award of degrees, diplomas, certificates and other academic distinctions. (emphasis added)

[76] In addition to the above, Senate is also vested with the following functions and powers:

> (2A) In addition to the functions and powers under subsection 4(3) and subsection (2) the Senate shall perform the following functions and exercise the following powers:
>
> (a) …
>
> (b) …
>
> (c) to formulate policies and methods of instruction, education, examination, research, scholarship and training conducted by or from the University;
>
> (d) to ensure educational standards in the course of study provided in, by or from the University;
>
> (e) …
>
> (f) …
>
> (g) To regulate the conduct of Assessments and examinations, confirm examination results and determine appeals;
>
> (h) …
>
> (i) To do all things expedient or necessary for or incidental to the performance of its functions under the Constitution.
>
> (emphasis added)

[77] The powers of Senate in respect of the conferment of PhD degrees is further reinforced by regulations made pursuant to the UUCA 1971 ie, University of Malaya (Degree of Doctor of Philosophy) Rules 2007, in which is stated as follows:

> 14. A degree shall be conferred on a candidate who has:
>
> (a) …
>
> (b) satisfied and been recommended to be conferred the Degree by the Committee of Examiners and approved by the Senate.

[78] From the foregoing, it is clear that Senate has extensive powers in respect of academic matters. Senate is legally empowered to be the governing body that is not just responsible for the conferment of degrees, but also tasked with the 'control and general direction of instruction, research and examination', which includes the regulation of conduct of assessments and examination results and the formulation of policies in relation thereto.

[79] When we consider the membership of Senate as provided under the UUCA 1971, which comprise leading academicians and administrative heads chaired by a Vice Chancellor, it is entirely consistent with the exclusive

power of Senate to determine academic matters and in the instant case, if a particular thesis has satisfied the stringent requirements to be conferred a PhD degree. The maintenance of educational standards in any course of study, is in fact one of Senate's functions under UUCA 1971.

[80] A university's exclusive jurisdiction to determine academic matters is supported by Malaysian as well as precedents in U.K. In the case of *Dr. Amir Hussein Baharuddin v. Universiti Sains Malaysia* [1989] 1 LNS 76; [1989] 3 MLJ 298, 301, the applicant had been appointed Dean of the School of Social Science for several consecutive terms but was not reappointed thereafter. His application for leave to apply for an order of *certiorari* to quash the decision not to reappoint him was refused. Edgar Joseph Jr. J (as he then was) had expressed his reluctance to intervene in the affairs of a university as His Lordship considered the decision to be, "exclusively a domestic matter involving academic judgment, to be resolved internally". His Lordship had further expressed the reluctance of the courts to intervene in such matters (at p. 298 (MLJ)) as follows:

> More to the point, the reluctance of courts to interfere in all matters concerning the domestic affairs and internal management of the university stems from their enthusiasm for the jurisdiction of the university visitor (equivalent in this country to that of vice chancellor) in such matters (see *Patel v. University of Bradford Senate* at pp1499-1500). The English courts have continued to assert the exclusivity of the university visitor's jurisdiction *(Glynn v. Keele University*), and even to enlarge it (*Patel*'s case)".

[81] It is noteworthy that in *Amir*'s case (*supra*) the High Court had refused to intervene in the powers of the Vice Chancellor of the University conferred under s. 18 in the decision not to reappoint a Dean of a faculty on the premise that it involved "academic judgment", to be resolved internally. In our considered view, on the facts of the instant case, the grounds for non-interference are stronger by far as the decision is directly related to an academic matter ie, the requirements to be satisfied by a PhD thesis in order to be conferred a PhD. Senate, a body constituted under UUCA 1971 has been conferred express powers of control and direction, and amongst others to formulate policies in respect of instruction and research. The Guidelines which amongst others, stipulate the date of a thesis to be the date of final submission has been adopted by Senate to apply to all candidates of PhD programs. This requirement of the current dating of a thesis is consistent with the maintenance of academic standards which is one of the functions that is legally empowered to Senate. It is not open to courts to review the merits of such Guidelines or policies.

[82] The exclusive jurisdiction of a university to determine whether a candidate has satisfied the requirements to be conferred a degree is indisputably an academic matter not amenable to the supervision of courts. This legal position has been reinforced in many judicial precedents in UK. A leading case in point is the case of *Patel v. University of Bradford Senate* [1978] 1 WLR 1488, Megarry VC. The brief facts are as follows. An undergraduate student ('the candidate') in a Computer Science honours course in the University of Bradford ('the University') had failed his examinations twice. The University's School of Studies in Mathematical Science had recommended that the candidate should fail and that he should withdraw himself from the University. The Board of Studies in Physical Sciences confirmed the recommendation, which was then approved by the University's Senate. The candidate appealed to re-enter the University but his appeal was rejected. The candidate then filed an originating summons which prayed for *inter alia*, readmittance into the University. The court held that it had no authority to adjudicate on the candidate's examination results, where the statute had spelt out the authority of the University visitor ie, the Senate. This principle of a University's exclusive jurisdiction in academic matters is applicable even if there is an allegation of bias or *mala fide* or a breach of natural justice.

[83] Similarly, in the case of *Thorne v. University of London* [1966] 2 All ER 338, the plaintiff had claimed that his examination was negligently and wrongly marked. The plaintiff prayed *inter alia* for a *mandamus* to compel the university to confer an appropriate grade. The defendant university filed an application to strike out the plaintiff's suit under O. 18 r. 19 and obtained an order in terms of the application. The court held that the authority to conduct examinations and to confer degrees was exclusively within the jurisdiction of the university visitor, and not justiciable in courts. Similarly, in *Rex v. Dunsheath ex parte Meredith* [1951] 1 KB 127, the English Court of Appeal decided that a court will not grant a *mandamus* against a visitor of a university/college on domestic matters.

[84] The principle in all the above-mentioned cases is indisputably clear. All academic matters, in particular the determination of examination results, and conferment of degrees are matters within the exclusive jurisdiction of a university visitor, or in our case, Senate, which is the body legally empowered to determine such matters. Senate itself is comprised of senior and experienced academicians and administrative heads with the necessary expertise and experience to determine such matters. To allow courts to determine disputes on academic matters would be a serious transgression and would compromise the credibility of a university and Senate as it would open floodgates to failed and aggrieved candidates to come to court to have their examination results re-examined by the courts, which unfortunately, is exactly what happened in the three JR applications instituted by the applicant in respect of his PhD thesis.

[85] Learned counsel for the applicant had referred to cases where the courts had intervened in the decisions of universities. However, these cases can be distinguished on the particular facts. In the case of *Dr. Chandra Muzaffar v. University Malaya* [2002] 2 CLJ 448; [2002] 5 MLJ 369, the issue before the court was in relation to the decision of the Vice-Chancellor on the renewal of a contract of employment of a professor. In the case of *Rohana bte Ariffin & Anor v. Universiti Sains Malaysia*, the issue before the court was whether the University Council in its conduct of disciplinary hearings against the appellants, had failed to accord to the appellants a fair hearing. In the case of *R (on the application of Clarke) v. Cardiff University* [2009] EWHC 2148; the issue before the court was whether there was an element of bias in the composition of the extenuating circumstances committee. In the case of *R (on the application of Persaud) v. Cambridge University* [2001] EWCA Civ 534, the issue before the court was in respect of the procedural fairness of proceedings of the University's Board of Graduate Studies.

[86] In all the above authorities that the applicant has referred to, none of them relates to issues in respect of examinations or academic dissertations or thesis which are within the ambit of academic matters and therefore outside the purview of the courts. The above cases are distinguishable from the instant appeal as they were matters in respect of procedural fairness of relevant proceedings or contract of employment of university staff (*Dr. Chandra Muzaffar* (*supra*)).

The Previous Two Judicial Review Applications

[87] Learned counsel for the applicant had argued further that in the previous two judicial review proceedings, the disputes concerned matters which were more within the academic sphere ie, the applicant's non-attendance at *viva voce* examination and the decision of the EC, yet the two respective High Courts had intervened to allow the applications. Thus, it was argued that this demonstrates that even in academic matters, the jurisdiction of Senate is not exclusive and can be subject to judicial scrutiny. It was argued further, therefore there is all the more reason that the mere dating of a thesis, which is not an academic matter but administrative or clerical, is a matter not within the exclusive jurisdiction of the respondent but within the purview of the courts.

[88] As we have mentioned before, the issue of the dating of a PhD thesis is stipulated in the Guidelines that is applicable to all PhD candidates and is a requirement to ensure the maintenance of academic standards of PhD thesis. It is entirely misleading and erroneous of the applicant to trivialise it as mere administrative or clerical.

[89] In the first JR, the learned High Court Judge, Dato Rohana Yusof (as she then was) on 27 September 2011 had allowed the applicant's prayer for *certiorari* to quash the respondent's decisions in its letter dated 4 December 2009 which nullified the *viva voce* of 28 September 2009, and the letter of 24 December 2009 which decided that the applicant had failed his PhD. The letter of 4 December 2009 was issued after a meeting of Senate had rejected the reports of the external and internal examiners due to serious doubts of their authenticity and as a result, required the applicant to attend a second *viva voce* on 10 December 2009. The letter of 24 December 2009 had informed the applicant that as a result of his failure to attend the second viva, the applicant had failed his PhD.

[90] In the second JR, the learned judge, Datuk Hanifah Farikullah (as she then was) had similarly allowed the applicant's application and in doing so, had gone even further by allowing the following reliefs: a *certiorari* to quash the Senate's decision which required the applicant to attend the second *viva voce* in relation to his thesis; a *certiorari* to quash Senate's decision which required the applicant to make major corrections to his thesis; a declaration that in accordance with the decision of the High Court on 27 September 2011, there is no basis or power for Senate to declare the first *viva voce* held on 28 September 2006, as invalid; a prohibition to prevent Senate from subsequently calling any *viva voce* in relation to the applicant's thesis and a declaration that Senate to proceed to make a decision on the applicant's PhD degree based on the thesis submitted on 20 March 2006 and the reports of the external and internal examiners in relation to the said thesis, and the opinion of the EC after the first *viva voce* held on 28 September 2006.

[91] The learned respective High Court Judges had allowed the applicant's previous two JR applications, while at the same time had expressly acknowledged the exclusive jurisdiction of the respondent's Senate to confer degrees pursuant to the UUCA 1971, and the University of Malaya Constitution. In this respect, it must be understood that the conferment of degrees by Senate is not a mere ceremonial function that exists in a vacuum. Such powers must necessarily extend to powers to determine all academic and related requirements in relation to the conferment of such degree pursuant to the relevant statutes, rules and regulations as well as applicable Guidelines.

[92] The conferment of a degree by Senate in effect represents that a candidate had successfully undertaken the training, instruction or research and complied with the requirements of such so as to merit conferment of such degrees. Thus, Senate's powers to confer degrees must necessarily encapsulate the powers to evaluate and determine whether a candidate has complied with the relevant procedures and requirements of the respective

degrees in order to be conferred the degree. With all due respect, for the respective High Courts to acknowledge Senate's powers to confer degrees without acknowledging Senate's powers to determine the merits of a thesis in respect to established procedures and requirements, is to pay only lip service to the powers of Senate pursuant to the UUCA 1971, as well as relevant Regulations and Rules. Clearly, this was not what was intended by the relevant statutes, Regulations and Rules.

[93] In our considered view, what had transpired in the previous two JR proceedings was that the respective High Courts, in allowing the applications for JR to quash the decisions of Senate in respect of the applicant's PhD thesis, had not only transgressed into the exclusive jurisdiction of Senate in its decision to require the applicant to attend a second and subsequently a third *viva voce* for the examination of his thesis, as well as to make major corrections, but had usurped the power of Senate by substituting the decision of Senate to nullify the dubious results of the applicant's thesis submitted in 2006, and substituted their own decisions by compelling Senate to confer a PhD on the applicant on the basis of compromised examiners reports in 2006, which had in fact been nullified by Senate. In the second JR, the learned High Court Judge had even gone to the extent of granting a declaration that in accordance with the decision of the High Court on 27 September 2011, there is no basis or power for the respondent to declare the first *viva voce* held on 28 September 2006, as invalid and granted a prohibition to prevent Senate from subsequently calling any *viva voce* in relation to the applicant's thesis.

[94] In effect, the learned judges in the previous two JR applications had taken upon themselves the powers legally conferred on Senate and what was worse, to direct Senate to confer a PhD degree on the applicant premised on examiners' reports which an investigation had found to be compromised and in contravention of express powers given to Senate pursuant to the UUCA 1971 and Regulations, Rules and statutes, and notwithstanding the applicant's failure to abide by the Rules, Regulations and Guidelines which applies to all PhD candidates.

[95] It is unfortunate that this appeal before us is the third judicial review application on the same academic matter ie, the applicant's PhD thesis. The applicant had succeeded in some of his prayers in the earlier two JR applications and no doubt was emboldened to institute a third JR application in respect of the same PhD thesis. The respective High Courts had erred in law in allowing the applications in the earlier two JR proceedings when the matter raised by the applicant was clearly an academic matter within the exclusive jurisdiction of Senate and not subject to the supervision of the courts. The two previous JR applications should have been dismissed on this

ground alone. It was also unfortunate that the respondent had not appealed against the decisions in both JR applications, or the matter could have been corrected on appeal.

[96] The dating of a PhD thesis is stipulated by the Guidelines abovementioned. It is entirely wrong to categorise the above requirement as merely administrative or clerical. Since the dating relates directly to a PhD thesis and the maintenance of the academic standards of PhD thesis, and the Guidelines have been adopted by Senate to apply to all PhD thesis, it is a matter within the exclusive jurisdiction of Senate. It is not for courts to adjudicate on the merits of such a requirement. In any event, as stated earlier, to focus the issue on only the mere dating of the applicant's thesis is both an oversimplification and misleading for the reasons stated above. To allow this third JR application would in effect be to perpetuate the errors of law of the respective High Courts in the two earlier JR proceedings.

[97] We wish to reiterate our position that the instant appeal should be dismissed on the sole ground that courts have no jurisdiction to determine academic matters which are legally within the purview of Senate, and we have no doubt that the issue of the date of thesis is a matter within the academic judgment of Senate.

Non-Compliance With Relevant Regulations, Rules And Guidelines

[98] Be that as it may, for the sake of argument, if the issue of the dating of the applicant's thesis is justiciable, on the facts and circumstances of the case, the respondent's decision to fail the applicant's PhD thesis, for among others, the applicant's refusal to date his thesis as 2017 instead of 2006 is neither unreasonable, irrational nor illegal, and thus not amenable to review. However, we reiterate the point that it is an oversimplification and highly misleading to focus only on the requirement to date the applicant's thesis in 2017, without considering the other requirements which were not complied with by the applicant, as well as the particular facts and circumstances in relation thereto, which are not only pertinent but critical to this appeal. We disagree with learned counsel for the respondent that the matters in relation to the authenticity of the external and internal examiners' reports in 2006 in respect of the applicant's thesis are 'irrelevant considerations' that the learned judge had taken into account in this appeal as they relate directly to Senate's decision to nullify the *viva voce* and EC results of 2006, which set the train of the applicant's three JR applications.

[99] The conferment of a PhD degree by Senate is subject to the UUCA 1971, relevant Regulations, Rules and Guidelines, which provide the necessary infrastructure and serve to ensure the credibility and integrity of the PhD degree and by necessary implication the university which awards

the degree. Such requirements may range from substantive requirements in respect of the appointment of examiners and supervisors, subject matter of a PhD thesis, examination procedures, its publication date, as well as requirements in respect of the spacing and font size of a PhD thesis. In this regard, reference is made to the University of Malaya (Degree of Doctor of Philosophy) Regulations 2007, and the University of Malaya (Degree of Doctor of Philosophy) Rules, as well as Guidelines for the Preparation of Research Reports, Dissertations, and Thesis, 2015.

[100] As stated before, the powers of Senate in respect of the conferment of PhD degrees is further reinforced by regulations made pursuant to the UUCA 1971 ie, University of Malaya (Degree of Doctor of Philosophy) Rules 2007, in which is stated as follows:

> 14. A degree shall be conferred on a candidate who has:
>
> (a) …
>
> (b) satisfied and been recommended to be conferred the Degree by the Committee of Examiners and approved by the Senate.

[101] At this juncture, it is pertinent to note, as the learned judge did, that the Guidelines require the year of a thesis to be the year of submission:

> The spine of the manuscripts should show the title of research report/ dissertation/thesis, name of author, year of submission and name of degree. The year of submission must be in accordance to the year when the research report/dissertation/thesis is submitted.

[102] Has the applicant complied with all the requirements in order to be conferred a PhD degree? If not, are there sufficient circumstances to merit the applicant's case to be treated as a kes khas (exceptional case) to be exempted from compliance with the above-mentioned requirements? The undisputed answer to both questions abovementioned is, in our considered view, a decisive 'No'. The applicant had failed to attend a second and third *viva voce* for the examination of his thesis by the EC. He had submitted his final thesis for Senate's endorsement without verification of the minor corrections on his thesis by his supervisor, Dr. Hanafi and he had also failed to date his thesis in 2017 instead of 2006, as stipulated by the Guidelines.

[103] The applicant insists that irrespective of his failure to adhere to the abovementioned requirements, he is entitled to be conferred a PhD because the decision of the EC after his viva in 2006 was that his thesis has achieved sufficient academic merit and he had worked very hard on his thesis. However, that argument is untenable for the following reasons: Senate had nullified the decision of the EC in 2006 after due investigation found the external and internal examiners' reports to have been compromised by a suspicion of collusion between the examiners. In any event, in 2006, the

applicant's PhD thesis was not finalised yet. The decision of the EC is only a recommendation, as the thesis still requires corrections, *albeit* minor, and due verification by the applicant's supervisor before it is ready for final submission to be endorsed by Senate. In short, the applicant insists on being conferred a PhD premised on dubious examiners' reports and without adhering to all the requirements all PhD candidates are subject to.

[104] It is not disputed that the above-mentioned Regulations, Rules and Guidelines apply to all PhD candidates, including the applicant as the above-mentioned are public knowledge and there is no contention by the applicant that he was unaware of them. The main thrust of the applicant's argument in this third application for JR is that the mere dating of his PhD thesis, not in accordance with Senate's decision (2006 instead of 2017) should not be the reason to fail him, as the requirement in the Guidelines, are not mandatory, and even if it were, an exception should be made in his particular circumstances as dating his thesis in 2017 instead of 2006 would compromise his credibility as an academician.

[105] The argument of the respondent is that there is good reason that the Guidelines stipulate the date of publication of thesis to be the date of submission. If it were otherwise, a PhD candidate would be at liberty to refer source materials up to a certain date in the past (in the applicant's case 2006) but date his PhD thesis in the current year in this case 2017, which is a lapse of more than a decade. This anomaly would not only be misleading but would affect the credibility of the respondent in allowing the publication of an outdated thesis. Thus, contrary to the argument of the applicant, the issue of the dating of a PhD thesis is not merely administrative, or clerical and certainly no trivial matter as it directly relates to the maintenance of the academic standards of PhD conferred by the respondent.

[106] The applicant's appeal to have his PhD thesis dated 2006 instead of 2017 was duly considered and rejected by Senate, on the grounds that 2006 is factually not the date of final submission of the applicant's thesis ready to be endorsed by Senate, but also would be based on the examination reports of the external and internal examiners of the applicant's thesis whose authenticity has been compromised.

[107] In 2006, the external and internal examiners had submitted their reports. This led to a *viva voce* that was attended by the applicant and the EC's decision that the applicant's thesis had achieved sufficient academic merit and required minor corrections. At this stage, the applicant's thesis was still subject to corrections and had not yet been put in a finalised state so as to be ready to be endorsed by Senate.

[108] In addition, the events after the EC's decision in 2006 cannot be ignored. Subsequently, Dr. Redzuan in a report to the then Vice Chancellor, stated that there were serious doubts of the authenticity of the external and internal examiners reports and a suspicion of collusion by the examiners. After due investigation, the appointment of new external and internal examiners was recommended as Senate had nullified the decision on the applicant's thesis by the EC in 2006. In the circumstances, could Senate have done otherwise?

[109] Thus, given the factual circumstances abovementioned, to date the applicant's thesis as 2006 would in effect be to confer a PhD thesis on a candidate whose thesis did not adhere to the established requirements and what is worse, on the premise of examination reports which have been found to be compromised in its authenticity on a suspicion of collusion between the examiners of the applicant's thesis. The applicant insists the above reports that were considered by the learned High Court Judge to be irrelevant considerations. We disagree, as the report relates directly to the credibility of the applicant's PhD thesis and the reason for the Senate's decision to reject 2006 as the date of the thesis's publication.

[110] The applicant's apprehension that dating his thesis in 2017 instead of 2006 would compromise the academic credibility as the materials referred to in his thesis were only up to 2006, could be overcome by addressing the time limitations of his thesis in an abstract or introduction to his PhD thesis. This is not an uncommon methodology in all thesis. Thus, the applicant's contention that he was not made aware of this until much later is not tenable.

[111] Has Senate acted unreasonably in failing the applicant's PhD thesis as contended by the applicant? As narrated above, Senate had acted to nullify the results of the *viva voce* and EC of 2006, after an investigation and report had cast serious doubts on the credibility of the internal and external examiners' reports in respect of the applicant's PhD thesis. Subsequently, Senate had given the applicant several opportunities to comply with the requirements pursuant to the relevant Regulations, Rules and Guidelines to enable Senate to confer the applicant with a PhD degree. The requirements, it must be noted apply to all PhD candidates, including the applicant. However, the applicant had refused to comply with the abovementioned requirements.

[112] The same question can be asked of the applicant. Has the applicant acted reasonably to be entitled to be awarded a PhD? The applicant's unreasonable conduct throughout the three JR applications must also be noted. Following Senate's decision to nullify the *viva voce* and compromised examiners' reports of the applicant's PhD thesis and the decision of EC in 2006, Senate had appointed new external and internal examiners and a new

EC to examine the applicant's thesis. The applicant was given the opportunity to attend a second *viva voce* in 2009. This the applicant wilfully refused to do, claiming he had already passed the first *viva voce* in 2006 and refused to acknowledge Senate's decision to nullify the same. When the second *viva voce* was conducted in his absence and major corrections were proposed by the EC, the applicant refused to make such major corrections, still insisting on the 2006 nullified *viva voce* when only minor corrections were recommended. Unfortunately, respective orders of the court nullified the abovementioned decision of Senate. Subsequently, another opportunity was given to the applicant to attend a third *viva voce* in 2015. The applicant failed to attend this third *viva voce* and although he made minor corrections as recommended, failed to have the corrections verified by his supervisor and dated his thesis as 2006 instead of 2017, contrary to the requirement stipulated in the Guidelines. An extension of time for the applicant to submit his thesis in accordance with the requirements was also given by Senate, which was not acceded to by the applicant. In consequence of the above, a meeting of Senate held that the applicant had failed his PhD. This led to the third JR application and the instant appeal.

[113] In light of the above, what is the reason for the applicant's repeated refusal to attend a *viva voce* to defend his thesis? And his wilful insistence on dating his PhD thesis as 2006 instead of 2017? The respondent's contention that the applicant was motivated by pecuniary benefits cannot be entirely dismissed. In both the first and the second JR, amongst the prayers sought by the applicant was for a *mandamus* to compel the respondent to pay all benefits, including salary increments from 2006, based on the results of the *viva voce* on 28 September 2006. While the respective High Courts in the previous two JR proceedings had allowed the applications, this particular prayer of the applicant was dismissed.

[114] Thus, we are of the view that there is cogent and overwhelming evidence to support the decision of the respondent's Senate to 'gagal keluar' (fail) the applicant's PhD thesis for his wilful non-compliance with the requirements stipulated by Senate, which includes the attendance of a *viva voce* before the EC, the verification of corrections by the applicant's supervisor and the dating of the applicant's PhD thesis as 2017 instead of 2006. We agree that there are no good reasons to treat the applicant's case as 'kes khas' (exceptional). On the facts and circumstances of this case, it is certainly not irrational or unreasonable for the respondent's Senate to fail the applicant's PhD thesis, as to do otherwise would not only contravene all established procedures and requirements in the relevant statutes, Rules and Guidelines in respect of all PhD thesis and this would in turn undermine the credibility of degrees awarded by the respondent.

[115] On the contrary, the applicant's unreasonable conduct in insisting that an exception be made to exempt him from the requirements applicable to all PhD candidates, that he be conferred a PhD on his own terms, (including premised on compromised examiners' reports in 2006) probably motivated by pecuniary benefits, and seeking the court's orders to do so in not less than three JR proceedings must be strongly discouraged. A clear message needs to be sent that pursuant to relevant statutes, Regulations and judicial precedents, all academic matters, including the requirements in Guidelines in respect of dating of a PhD thesis are within the exclusive jurisdiction of Senate and not subject to judicial scrutiny. Otherwise, courts would be inundated with failed and aggrieved candidates who run to the courts to re-examine their academic results and to confer them with their desired results or degrees, which unfortunately was what the applicant sought to do in no less than three JR proceedings.

[116] In conclusion, for all the reasons stated above, we dismissed the applicant/appellant's appeal with costs and affirmed the decision of the learned judge.

[117] It is to be noted that Justice Ahmadi bin Haji Asnawi JCA, who chaired this panel has since retired as of 8 February 2020.

Mary Lim JCA (dissenting):

[118] This is the third time the appellant was in court over substantially and essentially the same matter, that is, the result or outcome of a PhD degree course that he had registered with the respondent way back on 16 October 1996. The respondent had failed him and this latest decision was communicated *vide* letter dated 23 June 2017.

[119] In the earlier two challenges, the court had quashed the decisions reached by the respondent wherein the respondent had, also in essence, then, failed the appellant. Following those decisions of the High Court, the respondent once again considered the appellant's result, and once again, failed him. When he approached the court for the third time to quash the decision of the respondent, it was dismissed, *inter alia* on the ground that the matter was *res judicata*.

[120] After hearing the respective counsel and upon consideration of the records of appeal, this is my decision, which differs from the majority.

The Philosophy Of Cittars

[121] This appeal cannot be properly considered without knowing and appreciating the full factual backdrop and the earlier two applications for judicial review. Much of the initial factual background may be found in the grounds of decision of Rohana Yusuf J (as Her Ladyship then was) who heard the first challenge. Those facts are adopted here for ease of reference.

[122] On 16 October 1996, the appellant, a lecturer with the respondent, registered to pursue a PhD programme with the respondent; his thesis was on "The Philosophy of Cittars". On 20 March 2006, he submitted his thesis for examination and on 28 September 2006, was called up for a *viva voce* examination before a committee of examiners. At the end of that *viva voce*, he was informed that he had passed his PhD and was congratulated by the committee of examiners.

[123] Despite that, he was not conferred his PhD and so began a series of inquiries and reminders that took over three years before the respondent informed the appellant *vide* letter dated 4 December 2009 that his first *viva voce* was deemed invalid on the ground that the Senate rejected the internal and external examiners' reports including the board of examiner's result of 28 September 2009. The Senate decided to appoint new internal and external examiners to examine the appellant's thesis and to convene a board of examiners' meeting upon receiving the new reports. The appellant could not accept the respondent's decision, remonstrated with the respondent who then informed the appellant *vide* letter dated 24 December 2009 that the Senate had decided that the appellant had failed his PhD programme and was not permitted to continue with the programme.

[124] On 27 September 2011, the appellant successfully had those decisions for a second *viva voce* and of his failure, quashed – first judicial review proceedings.

[125] In granting the orders of *certiorari* and finding the decision to be in breach of the rules of natural justice and the relevant procedures, of both substantial and procedural legitimate expectation, that "simply cannot stand to reason and good conscience", Her Ladyship Rohana J (as Her Ladyship then was) in strong and no uncertain terms remarked:

> [39] From the factual matrix of the present case the time taken by the Respondent to issue the First Impugned Letter is simply unacceptable of any university. How could a candidate be made to wait for 3 years only to be told that the report of both Internal and External Examiners as well as the Board of Examiners report, all of whom were appointed by the Respondent itself, had been rejected for no good reasons? Such lack of sensitivity and candour must be embarrassing to the intellectual community while for the Applicant, it must be like bile stuck in his throat.
>
> [40] In as much as I tried to understand the Respondent's acts and omission in this case, I find little or no comfort to know that a great university such as the Respondent could be so reckless, callous and totally insensitive in the conduct of its affairs. Its lackadaisical attitude is shown even in its affidavit filed herein. A university as the name suggests is where many of our dreams, ideals and intellect are shaped. It prepares students for productive and rewarding lives. It produces thinking and

> educated people; people who appreciate and understand how the work of our country has been performed in the past and will be performed in the future. The entire community, the state, the country, even the larger global community, shares the benefits that educated people bring to community life. It must therefore live up to its role and expectation. It must strive to achieve these purposes with honesty and integrity. It must therefore do justice to its students so that they can bring justice to the entire community.

[126] Her Ladyship concluded that the decisions impugned there "simply cannot stand to reason and good conscience." Her Ladyship was however, restrained from granting the PhD finding that she "must regretfully hold that the right to confer the degree should be left to the respondent and its conscience."

[127] That did not materialise. That was in 2011. The respondent did not appeal against that decision.

[128] Instead, following repeated requests, reminders and discussions on the status of his PhD, the respondent informed the appellant *vide* letter dated 11 March 2014 that the Senate had decided that the appellant was required to attend a second *viva voce* and for that purpose, the Institute Pengajian Siswazah (IPS) would form a committee of examiners, appoint two new external examiners and one internal examiner.

[129] Despite the appellant's objections on the ground that this decision was "virtually identical" to the earlier impugned decisions which had already been quashed, the respondent set 19 December 2014 for the second *viva voce*. The appellant did not attend. The second *viva voce* proceeded in his absence. By letter dated 30 March 2015, the appellant was informed that the committee of examiners had proceeded with the second *viva voce* on 16 March 2015 and had found that his thesis required major corrections which he had to attend to. The appellant was then to submit a thesis correction report by 15 September 2015 failing which he would fail his PhD.

[130] The appellant once again approached the court to quash the decisions of 11 March 2014, 12 March 2015 and 16 March 2015 – second judicial review proceedings.

[131] On 27 June 2016, the High Court quashed those decisions and directed the respondent to proceed to make a decision on the appellant's PhD based on the appellant's submission on 20 March 2006, the reports of the internal and external examiners on his thesis and on the findings of the committee of examiners following the first *viva voce* convened on 28 September 2006.

[132] This then brings us to the events that led to the third judicial review proceedings and this appeal.

[133] By letter dated 30 September 2016, almost three months after the second judicial review proceedings, the respondent informed the appellant that the Senate had on 29 September 2016 decided that the appellant had achieved the necessary academic merit to be conferred with the PhD subject to him carrying out minor corrections as stipulated by the examiners within six months, ie, on or before 28 March 2017. The appellant did so. Thereafter, the thesis had to be printed and bound for final submission.

[134] In the course of his preparation, the appellant was informed that he would have to print the date "2017" on the cover of his thesis as that was the date of the final submission of his thesis. The appellant however, maintained that his thesis should be dated "2006" for numerous reasons, some of those reasons are highlighted below:

(i) materials used for his thesis only reflect developments in the field as at some time before the submission date on 20 March 2006 and do not take into account matters/sources from that date to 2017, a period of some 11 years;

(ii) since that date, there have been many studies, articles and papers published on or relating to the subject matter of the thesis;

(iii) conferences on or relating to the subject matter of the thesis have also been held in Malaysia and elsewhere during the intervening period;

(iv) thesis would be rendered outdated and unreliable if dated in 2017;

(v) thesis will thus not be able to serve as a source for other publications;

(vi) the appellant's standing and credibility as a whole and as a supervisor to other post-graduate students who may wish to do research under his supervision will be affected;

(vii) the credibility of the respondent as a premier university would also be affected if it were to allow the publication of an outdated thesis;

(viii) an outdated thesis can also be misleading to persons unfamiliar with the subject matter and who may be unaware of recent developments or publications;

(ix) the thesis would not be in conformity with the respondent's new Guidelines issued on the preparation of research reports, dissertations and thesis.

[135] Over and above these reasons, the appellant maintained that dating his thesis in 2017 would affect his integrity and the quality of his thesis and tarnish his reputation.

[136] For these reasons, the appellant submitted his final thesis on 27 March 2017 but the publication was printed with the date of "2006".

[137] The respondent through IPS, rejected the thesis.

[138] On 28 March 2017, the appellant appealed, urging the respondent to treat his case as a "special case" and resubmitted his thesis.

[139] On 30 March 2017, IPS informed the appellant that although his submission was once again rejected, it would treat his letter of 28 March 2017 as an appeal to be considered as a "special case" and refer the matter to the Senate.

[140] On 2 May 2017, the appellant was informed that the Senate was agreeable to conferring on him the PhD subject to the appellant submitting on or before 27 May 2017 his final thesis printed with a publication date in 2017 and verified by his supervisor.

[141] On 16 May 2017, IPS emailed the appellant to remind him to submit his final thesis printed with the publication date in 2017. The appellant replied that that requirement was preventing him from submitting his final thesis and requested that IPS provides some other manner to resolve the issue.

[142] Unfortunately, an *impasse* ensued. On 23 June 2017, the appellant was informed that the Senate had decided on 22 June 2017 to fail him on the ground that his final thesis was not printed with a publication date in 2017.

The Third Judicial Review Proceedings

[143] The appellant filed the third judicial review proceedings seeking:

(i) to quash the decisions of 2 May 2017 and 23 June 2017 on the basis that such decisions were neither reasonable, rational or proportionate for the respondent to fail the appellant entirely from the Degree of Doctor of Philosophy merely on the basis that his final thesis was printed with a publication date in 2006 instead of 2017;

(ii) a declaration that the Guidelines governing the dating of a final thesis of a candidate are directory in nature and should not result in the appellant failing his Degree of Doctor of Philosophy when the respondent has already agreed that the thesis has academic merit to be awarded the Degree of Doctor of Philosophy;

(iii) a declaration that the appellant is entitled to date his thesis in 2006 given that:

A (a) thesis was submitted for examination on 20 March 2006;

(b) methodology, literature review and research component of the thesis was up to sometime before 20 March 2006;

(c) the appellant was examined by *viva voce* with reference to his thesis
B on 28 September 2006;

(iv) a declaration that the appellant be conferred the Degree of Doctor of Philosophy without the condition that his final thesis be specifically printed with the publication date in 2017.

C **[144]** The appellant premised his application on the following, that in arriving at the two impugned decisions, the respondent had:

(i) failed to fully appreciate the effect of printing the final thesis with the publication date 2017 on the quality and integrity of his thesis and on his reputation given that the thesis was submitted for examination on
D 20 March 2006; the methodology, literature review and research component of the thesis were up to sometime before 20 March 2006; and that he was examined by *viva voce* with reference to his thesis on 28 September 2006;

(ii) failed to duly consider that it was unreasonable, irrational and
E disproportionate for the respondent to fail him entirely from the PhD degree merely on the basis that his final thesis was printed with a publication date in 2006 instead of 2017;

(iii) failed to give due regard to the fact that his thesis had been assessed on its academic merit and that it had agreed to confer the PhD on him;

F (iv) acted unreasonably, in bad faith and unfairly when it insisted that his final thesis be printed with the publication date 2017;

(v) acted in violation of his legitimate expectation to be treated fairly, impartially and with good faith;

G (vi) took into account irrelevant considerations including but not limited to Guidelines governing the dating of a candidate's final thesis which were merely directory in nature;

(vii) failed to comply with substantial and procedural fairness;

H (viii) completely disregarded the spirit and intent of the two earlier decisions of the High Court in respect of the first and second judicial review proceedings;

(ix) acted unreasonably and in excess of its jurisdiction when it acted and conducted itself in a manner inconsistent with any other reasonable
I university of its standing; and when it arrived at decisions which no other university similarly circumstanced would have arrived at.

[145] In response, the respondent contended that the challenge on the dating of the thesis was caught by the doctrine of *res judicata* as the appellant was well aware of this requirement from the outset, yet had failed to raise the matter in the earlier two judicial proceedings. It was further contended that although the committee of examiners found that the thesis was of sufficient academic merit to be conferred the PhD, it still required corrections in which case legitimate expectation does not arise. In any case, the thesis could not be dated 2006 as it was still subject to corrections and had yet to be approved by the Senate. Finally, it was the respondent's position that it was always its right to confer the PhD, and this was so decided in both the earlier judicial review proceedings.

Decision Of The High Court In Third Judicial Review Proceedings

[146] The application was dismissed for the following reasons:

(i) The respondent and the Senate have exclusive power to award the appellant his PhD under the Universities and University Colleges Act 1971 and the University of Malaya Constitution;

(ii) Guidelines applied;

(iii) Guidelines were issued pursuant to the Senate's powers;

(iv) Guidelines were internal matters where the respondent has exclusive rights over which the court should not interfere;

(v) Guidelines required the spine of the manuscript should state the year of submission;

(vi) The High Court in the second judicial review proceedings had held that "the decision to award the PhD degree remain with the respondent" in which case the doctrine of *res judicata* prevents the appellant from re-ventilating the same issue.

[147] In short, the learned judge did not find the decisions unlawful, irrational, or disproportionate – see para. 35 of the grounds.

Decision

[148] What is of concern in this appeal is the Senate's specific power to grant a Degree of Doctor of Philosophy and the power to fail a person, the appellant, from a course leading to a Degree of Doctor of Philosophy for the reason(s) given, that is, the failure to print the publication of the thesis to be of 2017. That decision was conveyed in the respondent's letter dated 23 June 2017:

Adalah dimaklumkan bahawa Senat Universiti pada 22 Jun 2017 telah memutuskan bahawa tuan telah **gagal keluar** daripada program Doktor Falsafah.

Ini adalah kerana tuan gagal menyerahkan tesis akhir yang dicetak sebagai penerbitan pada tahun 2017 dalam tempoh yang ditetapkan sepertimana yang diputuskan oleh Senat pada 27 April 2017.

[149] This letter must be read together with the earlier impugned decision of 2 May 2017 which reads as follows:

Penyerahan Akhir Tesis Doktor Falsafah

Dengan hormatnya saya merujuk kepada perkara di atas dan surat tuan bertarikh 28 Mac 2017.

Setelah menimbang dengan teliti, Senat Universiti pada 27 April 2017 telah BERSETUJU supaya tuan dianugerahkan Ijazah Doktor Falsafah tertakluk kepada penyerahan akhir tesis tuan dicetak sebagai penerbitan pada tahun 2017 dan disahkan oleh Penyelia dalam tempoh satu (1) bulan mulai sehari selepas tarikh mesyuarat Senat.

Sehubungan itu, tuan dikehendaki menyerahkan tesis akhir tersebut selewat- lewatnya pada 27 Mei 2017 kepada Unit Tesis, Institut Pengajian Siswazah mengikut prosedur yang ditetapkan.

Sekiranya tuan gagal menyerahkan dalam tempoh yang disebutkan di atas, tuan akan dianggap gagal dalam peperiksaan tesis berkenaan.

[150] What seems to be seriously overlooked is the fact that the appellant failed all three times. Each time, it was not because of the academic content of his thesis. On the contrary, his thesis was/is of sufficient merit, and this was acknowledged or admitted by the respondent even in the first judicial review proceedings in 2006, that subject to minor corrections and verification by his supervisor, the committee of examiners (committee) had determined that the appellant had achieved sufficient merit to be conferred a PhD, and a resubmission was not required. Such a decision was found to be within the powers of the committee under reg. 27(1)(e) of the Regulations by Rohana Yusuf J (as Her Ladyship then was) in the first judicial review proceedings and also acknowledged by His Lordship in the present appeal – see para. 15 of the judgment; see also the recommendations of the committee dated 28 September 2006. Following its recommendations, the committee congratulated the appellant.

[151] The appellant also did not fail because his thesis was submitted late or outside the timelines stipulated by the Senate, or because there was no verification by a supervisor. Instead, he failed almost for the third time if one were to consider the respondent's decisions in the second judicial review proceedings as good as failures too. Each time, it was in respect of the same thesis. In the present appeal, he failed this time because he did not submit

a final thesis printed with the year of 2017 as the year of publication as required in the respondent's letter dated 2 May 2017, the first of two impugned decisions in the present appeal.

[152] The learned judge held that it was *inter alia* the exclusive prerogative of the respondent whether or not the appellant should be conferred the Degree of Doctor of Philosophy; that the respondent was entitled to insist on compliance of the Guidelines for the Preparation of Research Reports, Dissertations and Thesis 2015 (the Guidelines); that it was reasonable that the thesis be dated 2017 as that was when the corrections were made and; that the issue of his PhD was *res judicata*. The learned judge also decided that the Guidelines applied to the appellant.

[153] With respect, I must disagree.

[154] The relevant question that is frequently asked in judicial review proceedings is whether the impugned decision is reviewable by the court; and if the answer is in the affirmative, is the decision liable to be quashed on the grounds complained of, and ought the court grant the orders sought.

[155] Having examined the applicable legal principles against the factual backdrop and the reasons for His Lordship's dismissal of the application, I am satisfied that there is appealable error in this appeal warranting intervention. I find the impugned decisions reviewable and liable to be set aside on the grounds complained of. These are my reasons.

[156] It is opportune to be reminded that the respondent is not a sacrosanct or omnipotent entity whose decisions are not subject to or is beyond the scrutiny of the court. The respondent is a statutory body. It is established and incorporated under the University of Malaya Act 1961 which repealed the University of Malaya Ordinance of 1949. 1 January 1962 is its foundation day. Pursuant to s. 25 of the Universities and University Colleges Act 1971, the respondent is deemed to be a university established under the 1971 Act, *albeit* the University of Malaya Act 1961 continues to have application.

[157] Under s. 3 of the University of Malaya Act 1961, its Constitution known as the Constitution of the University of Malaya 1997 has force of law. The Constitution can be found in P.U.(A) 444/2010 (originally P.U. (A) 104/1972 repealed by P.U. (A) 107/1997 which was in turn repealed and replaced by P.U.(A) 444/2010) (the Constitution). Like all such bodies, it functions as a public learning institution for higher education where administrative, academic, disciplinary matters of students, staff, officers and employees of *quasi*-judicial character abound. In fact, the respondent is a body corporate with powers spelt out in s. 4 of the Constitution.

[158] Much of the respondent's affairs or business is regulated by statute, even the business of running degree courses or conferring degrees, diplomas, certificates and other academic distinctions including external degrees, diplomas, certificates and other academic distinctions upon persons who have followed courses of study approved by the university and have satisfied such other requirements as may be prescribed by rules – see s. 4(1)(c) of the Constitution.

[159] Sections 31(a) and 32 confer powers on the university's board of directors to make rules on the principles governing the award of degrees, diplomas and higher degrees. Pursuant to such powers, the Board of Directors of the University of Malaya enacted University of Malaya (Degree of Doctor of Philosophy) Rules 2007.

[160] Under r. 17, the Senate is empowered to make regulations for the purposes of carrying into effect or enforcing the provisions of the Rules. The Senate enacted the University of Malaya (Degree of Doctor of Philosophy) Regulations 2007.

[161] Both the University of Malaya (Degree of Doctor of Philosophy) Rules 2007 (the Rules) and the University of Malaya (Degree of Doctor of Philosophy) Regulations 2007 (the Regulations) apply to all candidates, including the appellant who registered on 16 October 1996, for the Degree of Doctor of Philosophy.

[162] Consequently, the exercise of any of its statutory powers is always justiciable and within the supervisory jurisdiction of the courts. It is only in the exercise of the court's supervisory powers over such institutions that the court may exercise some restraint, depending on the issues or matters in complaint. The restraint is also in the remedies sought, particularly for a *mandamus* order.

[163] In my opinion, the facts and circumstances in the present appeal do not, at all, fall in that category. In any case, the exercise of any particular power under consideration must always be within its prescribed limits. The respondent, without exception, does not have unfettered discretion and must exercise legal restraint at all times when exercising its powers. Often quoted are the hallowed and wise *dicta* pronounced by Raja Azlan Shah CJ in *Pengarah Tanah dan Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd* [1978] 1 LNS 143; [1979] 1 MLJ 135:

> Unfettered discretion is a contradiction in terms ... Every legal power must have legal limits, otherwise there is dictatorship. In particular, it is a stringent requirement that discretion should be exercised for a proper purpose and that it should not be exercised unreasonably. In other words, every discretion cannot be free from legal restraint; where it is wrongly

> exercised, it becomes the duty of the Courts to intervene. The Courts are the only defence of the liberty of the subject against departmental aggression. In these days when government departments and public authorities have such great powers and influence, this is the most important safeguard for the ordinary citizen: so that the Courts can see that these great powers and influence are exercised in accordance with law. I would once again emphasise what has often been said before, that public bodies must be compelled to observe the law and it is essential that bureaucracy should be kept in its place ...

[164] The learned judge found that the respondent was entitled to require the appellant to date his thesis to be as of 2017, as laid down in the Guidelines; and that pursuant to reg. 35(1) of the Regulations, it was up to the Senate and thereby the respondent to determine whether or not the appellant is to be conferred his PhD. Reading reg. 35(1) with s. 22(5) of the Constitution, the learned judge concluded that the Senate had the power to fail the appellant for not meeting the requirements of the Guidelines.

[165] That conclusion can only be of some merit if the Guidelines have the same force as the Constitution, statutes, Rules and Regulations. They are not.

[166] Section 4(1)(c) of the Constitution provides the respondent with the power to confer degrees, diplomas, certificates and other academic distinctions including external degrees, diplomas, certificates and other academic distinctions upon students who have followed any of the approved courses of study and have satisfied other requirements as may be prescribed by Rules. Pursuant to s. 22(5) of the Constitution, the Senate is the academic body of the respondent and "subject to the provisions of this Constitution, the statutes, Rules and Regulations", the Senate "shall have the control and general direction of instruction, research and examination, and the award of degrees, diplomas, certificates and other academic distinctions".

[167] It is clear from the dictates of ss. 4(1)(c) and 22(5) that the terms and conditions for the conferment of degrees, diplomas etc are as prescribed by the Constitution, statutes, Rules and Regulations. Although the Senate is the specific body charged with the control and responsibility on the award of such degrees, that mandate is also subject to the provisions of the Constitution, statutes, Rules and Regulations. As already pointed out earlier, specific Rules and Regulations have been passed to regulate all matters pertaining to the Degree of Doctor of Philosophy, namely the University of Malaya (Degree of Doctor of Philosophy) Rules 2007 and the University of Malaya (Degree of Doctor of Philosophy) Regulations 2007.

[168] The Rules and Regulations are fairly comprehensive.

[169] The Rules contain ten parts providing for what I would say, all matters relating to the Degree of Doctor of Philosophy, from the programme of study and admission requirements to matters concerning registration, payment, duration and structure of programme of study, language requirements, examinations and graduation as well as other general matters such as termination of candidature and exemptions. The Regulations, too, provide for such matters, but in greater detail going into matters concerning supervision, thesis, examinations, graduation, appeal and readmission before finally providing on general matters concerning the Senate's powers and non-graduating students. The Senate does not appear to have any power to enact or issue Guidelines; it only has power to make regulations – see r. 17.

[170] As for the Regulations, reg. 42 only provides the Senate with the power to "make, repeal or amend any regulations governing the degree programme of study as provided under these regulations. Any new regulations repeal or amendment to the said Regulations shall be made known to the candidates before the commencement of the candidate's academic session." Since the Guidelines were only issued in 2015 while the appellant commenced his academic session in 1996 and completed it in 2006, the Guidelines which the respondent rely on, do not apply to the appellant.

[171] In my view, the Guidelines in any event, do not apply to the appellant and certainly, not to his peculiar facts and circumstances for several other reasons.

[172] In the first place and as already pointed out, the Guidelines do not fall within the meaning and scope of the "provisions of the Constitution, statutes, Rules and Regulations" referred to in ss. 4(1)(c) and 22(5) of the Constitution. The principle of *expressio unius est exclusio alterius* (express mention of a thing in a contract or piece of legislation excludes all others) will prevail over any suggestion of the application of the principle of *sui generis*. It is only to the Constitution, Rules and Regulations that the condition(s) imposed by the Senate must be examined.

[173] Next, the Guidelines do not have the force of law, operating more as general administrative Guidelines. As indicated in its "Preface", the Guidelines were due to the "initiative" of the Institute of Graduate Studies (IGS), intended to "assist candidates to meet the minimal format requirements set by the university to complete the final form of a research report, dissertation or thesis"; with a caution that "the format may differ in each individual faculty, academy, institute or centre with its own additional requirements." Consequently, the Guidelines are couched in broad terms, and this is reflected, for instance, at section 2 on the sequence of contents, that the structure of the research report, dissertation or thesis is based on a

standard format which contains the three main sections of Preface, Main Text and Supplementary. In section 2.1.1, dealing with the "Title Page", it is stated that this page is the first page after the front cover and should include a) the final research title which has been approved by the faculty; b) name of candidate according to the registration records; c) the statement according to the mode of programme, and the year of submission. Section 3.1.9 explained that the year of submission "must be in accordance to the year when the research report/dissertation/thesis is submitted".

[174] In my view, the Rules or the Regulations must contain that basic requirement of printing the year of submission before the Guidelines may properly make that claim that it is drafted to assist candidates "meet the minimal format requirements set by the university to complete the final form of a research report, dissertation or thesis". There is no such requirement, be it in the Rules or the Regulations, leaving the Guidelines without any authoritative force.

[175] I must add that IGS does not in my view, equate to a university authority or committee as found in Part III of the Constitution to render the Guidelines that it had issued to be of equal or similar status with the Rules and Regulations. The power provided in s. 21(13) for a committee to regulate its own procedure at its own meetings is far from amounting to a power to issue Guidelines.

[176] The learned judge readily accepted the respondent's submission that the Guidelines have binding force, only because they appear to have been insisted by the Senate. However, even the Senate cannot make this requirement on the printing of the year of submission as it is not provided for in the Rules or even the Regulations. What the Rules and Regulations instead provide are these.

[177] In Part VIII of the Rules are the provisions for examinations as provided for in the Regulations. In Part VII of the Regulations, there are provisions for the determination of the title of the thesis, language of the thesis, and the submission of the thesis where matters such as the format, number of words, and the requirement of a statement of the candidate's work to be signed, are set out. Specifically, reg. 19(3) spells out the format of the thesis:

> (3) A candidate shall submit in print format of at least five copies of his thesis or such numbers as may be determined by the Faculty for examination. The thesis shall be:
>
> (a) prefaced by:
>
> (i) an abstract that does not exceed five hundred words in Bahasa Malaysia and English. Where the language of the thesis is other than Bahasa Malaysia or English, an abstract in that language must also be included; and

A (ii) a declaration of the originality of the writing in accordance with a format as may be determined by the University;

(b) typed and printed in double spacing on A4 size paper except for drawings or maps for which there is no size limitation. A margin of four centimetres shall be left on the left-hand side; and

B (c) bound in rexine red soft cover with the title or an abbreviation thereof and the name of the author printed in block letters on the spine and the cover.

[178] Regulation 19(11) further provides that:

C (11) Any thesis submitted for examination shall be in accordance with the regulations and procedures prescribed under these Regulations or any amendments thereof as may be made from time to time. The Dean of the Faculty may reject any thesis not submitted in accordance with any prescribed regulations and procedures.

D **[179]** The appellant's thesis was never rejected but it would appear from the respondent's letter dated 2 May 2017 that it had passed the appellant subject to the condition that the final copies of the thesis be printed with the year of 2017 as its year of submission is also without merit. However, a reading of reg. 19(14) shows that three copies of the thesis in print format as well as the electronic copy or version of the thesis are only prepared after the E examination of the thesis and the final result. The format and requirement of these copies of the thesis cannot, in my view, form the subject of conditions for passing the PhD. These are matters ancillary or post examination and final result. In any case, reg. 19(14) does not require the year of submission to be printed or carried. The appellant had already passed F his examinations and it was no longer open to the Senate to say otherwise on account of disagreement over the format of the thesis.

[180] These provisions of the Constitution, Rules and Regulations are firm and arguably mandatory on the submission requirements; but quite clearly, there are no provisions whatsoever on the printing of any date of the thesis. G Indeed, if the date of the publication is critical or absolutely vital to the success or failure of a candidate, surely such a requirement must be expressly and clearly stipulated in the Regulations. The stark absence of this requirement confirms for me at least, that the respondent's ground for failing the appellant is very much wanting and clearly devoid of merit.

H **[181]** None of the matters discussed above were considered by the learned judge. Instead, because ss. 4(1)(c) and 22(5) and reg. 35(1) provide that it is the respondent, through the Senate, that is empowered to confer awards and degrees, His Lordship accepted the relevance and application of the Guidelines without more. As shown, this is unfortunately incorrect.

I

[182] Over and above these observations and findings is the fact the Guidelines do not apply to the appellant. The Guidelines were made in 2015, whilst the thesis was submitted in 2006; and it has always been the same thesis which formed the subject matter of repeated examination and consideration by the respondent, whether in 2006, 2015 or 2017. It is still that same thesis examined by the committee back in September of 2006, which was examined by another committee of examiners in 2015, and by IPS in 2017. In 2005, the committee had concluded after the first *viva voce*, that the appellant had attained sufficient academic merit for the award of the PhD subject to minor corrections without resubmissions.

[183] This recommendation stands to this date and the decision in the second judicial review proceedings where the learned judge *inter alia* granted a "declaration that the respondent proceeds to make a decision on the applicant's PhD Degree based on the thesis submitted on 20 March 2006, the internal and external reports on the applicant's thesis and the opinion of the examination committee after the first *viva voce* held on 28 September 2006 as documented in exhs. MA1/MR1, and a *mandamus* to compel the respondent to make the decision within two months from the date of the order (the decision to award the degree remains with the respondent)", fortifies this conclusion.

[184] In my further opinion, the appellant's resubmission on 27 March 2017, after the second judicial review proceedings, does not alter the basic fact of unfinished business on the respondent's part; which Her Ladyship Rohana Yusuf J (as she then was) in the first judicial review proceedings had said that she "must regretfully ... left to the respondent and its conscience"; but which till to date is appallingly, still not attended to. Instead, the conduct of the respondent clearly illustrates utter refusal of the respondent to confer upon the appellant the PhD despite his successful and meritorious completion of the most important component of the degree which surely must be its academic content.

[185] Moving thence to the matter of passing and by necessary implication, graduation and this is where the respective Part IX of the Rules and the Regulations come into play. In my view, a proper reading of these Rules and Regulations show that the Senate and thereby the respondent is not entitled to deny the appellant his PhD where he has satisfied all the requirements set down by the Rules and the Regulations. Any requirement in the terms now required by the Senate must have been indicated early or contemplated at the commencement of the course, and not at or upon the completion of the course. This changing of goalposts reeks of unfairness and injustice.

[186] Further, the Senate plays a role of approving the conferment of the PhD which it cannot do without the recommendations of the committee. Conversely, the Senate cannot unreasonably and without proper grounds, either withhold or refuse to approve where the committee has recommended conferment. This is what is stipulated in the Rules and Regulations. Rule 14 of Part IX of the Rules reads as follows:

PART IX

GRADUATION

Graduation requirements

14. A Degree shall be conferred on a candidate who has:

(a) **fulfilled all the requirements of these Rules and any regulations made thereunder**;

(b) satisfied and been recommended to be conferred the Degree by the Committee of Examiners and approved by the Senate; and

(c) paid all his fees and other payments as prescribed by the University.

(emphasis added)

[187] In Part IX of the Regulations, also dealing with the subject of graduation, it is provided as follows:

PART IX

GRADUATION

Programme of study by Research

36. A candidate shall fulfill the following requirements for the purpose of graduation for a programme of study by Research:

(a) achieve a pass in the examination of his thesis;

(b) pass the *viva voce*;

(c) fulfil any other requirements set by the Faculty where the candidate is attending his programme of study; and

(d) fulfil the language requirements as may be prescribed.

[188] It is not suggested, neither can it be validly argued, that the requirement of dating or printing the year 2017 as the year of submission was a requirement of the faculty under reg. 36(c). It was clearly a condition set by the Senate when approving the conferment of the PhD on the appellant under r. 14.

[189] For the reasons already discussed earlier, the Senate is not entitled to approve the conferment of the PhD on the terms that it had set; more so when the committee had already recommended that the appellant be conferred a PhD. Where the appellant has satisfied the requirements in reg. 36, as it did in the circumstances of this appeal, under r. 14, the respondent shall confer the Degree of Doctor of Philosophy on the appellant.

[190] It was thus erroneous on the part of the learned judge to find that the Senate and thereby the respondent had exclusive power to confer the PhD on the appellant. It has power, no doubt, but it is not exclusive to the extent that it is beyond the scrutiny of the court. It is a statutory power which is not unbridled. Instead, it is circumscribed with terms and conditions. This statutory power must thus be exercised according to the law as passed. Quite clearly, from the facts enunciated and for the reasons discussed, the respondent has not exercised its powers in accordance with the relevant statutory provisions. Such decisions must be quashed and the appropriate remedies ordered.

[191] I can only conclude with the chequered history and for the reasons relied on by the respondent to deny the appellant his PhD after 11 years, through no fault of his but entirely that of the respondent, is appalling and deplorable. To borrow the words of Rohana J (as Her Ladyship then was):

> [36] Even more shameful is the fact that no explanation was given by the Respondent for having taken over 3 years to come to a decision. The attempt by affidavit of Professor Dato Ghauth Jasmon to explain the decisions, of course, made it worse for the Respondent.
>
> [37] In the final analysis there is no explanation on the time taken by the Respondent and no reason at all was given in the First Impugned Letter as to why, the Senate rejected the Internal and External Examiners reports including the Board of Examiners result on 28.9.2009. Surely a world renowned university like the Respondent cannot take well over 3 years to inform the Applicant that the *viva voce* was deemed invalid, even if it had the power to do so. Decisions such as these in my view do not augur well for a university and is so perverse.

[192] Similarly, the reasons offered by the respondent in this appeal, are completely devoid of merit, irrational and of *Wednesbury* unreasonableness, not to mention, perverse and unlawful as expounded in *Associated Picture Houses Ltd v. Wednesbury Corp* [1948] 1 KB 223. The failure of the respondent to follow its own Constitution, Rules and Regulations clearly amount to procedural impropriety which render the two impugned decisions unlawful and liable to be quashed. See *Akira Sales & Services (M) Sdn Bhd v. Nadiah Zee Abdullah & Another Appeal* [2018] 2 CLJ 513; [2018] 2 MLJ 537, *R Rama Chandran v. Industrial Court of Malaysia & Another* [1997] 1 CLJ 147; [1997] 1 MLJ 145; *Council of Civil Service Unions & Ors v. Minister for Civil Service* [1985] AC 374 as well as the decision of Rohana Yusuf J (as Her Ladyship then was) in the first judicial review proceedings.

[193] Finally, a quick examination of the appellant's reasons for not agreeing to the respondent's requirement. Aside from the reasons already deliberated above, the appellant's reasons of the inaccuracy and impact of such dating would bring to the integrity of his thesis not only make good sense but are valid and reasonable concerns. The appellant's thesis submitted in 2006 cannot be ignored as the first *viva voce*, in fact the only *viva voce* ever conducted, was over that one and only thesis. The respondent's suggestion that the appellant makes his reservations in the abstract was only suggested after the appellant had already filed the third challenge; but when pressed, the respondent was however, not prepared to reconsider.

[194] It is also observed that the respondent had been totally inconsistent on the question of whether minor or major corrections were called for by the committee. In the first judicial review proceedings, the committee first concluded that the appellant's thesis only required minor corrections whereas in the second judicial review proceedings, major corrections were required. Yet, when it came to the third judicial proceedings, once again, it was minor corrections. This suggests presence of arbitrariness and puts the respondent's conduct under the microscope, and where its delay in action, responding to a thesis which had already undergone a successful *viva voce* remains until this day, unattended to until and unless pushed, without conscience.

[195] The learned judge had ruled that the doctrine of *res judicata* applied to deny the appellant his remedies and his right of complaint. I cannot with respect, see how that principle applies; but even if it does, surely it must operate against the respondent in view of the two previous decisions already made in respect of the appellant's one and only thesis. The court has repeatedly ruled that the respondent's decisions in failing and in putting unreasonable requirements on the appellant before he is conferred his PhD are irrational, unreasonable and unlawful. As a learning institution, the oldest in our modest nation, it is most unfortunate to see the respondent imposing unnecessary roadblocks to success; and doing it repeatedly.

[196] I further do not see the issue at hand as one concerning the academic judgment of the respondent. Any question of academic judgment must surely be in relation to or on the appellant's thesis. The court is not required nor is it invited to examine the thesis and make any judgment of that nature. In any case, there is no need to even examine the thesis for that purpose as the respondent itself as well as the committee have consistently found the appellant's thesis to have attained sufficient academic merit to be conferred a PhD. The results of the *viva voce* conducted by the committee empaneled by the respondent way back on 28 September 2006, stands to this date.

[197] On a true analysis, this is a case of challenge of failure to observe process as laid down in the Rules and Regulations by the respondent. Such a challenge is eminently suited for scrutiny by the court and the court must never shy away from such tasks. Just as the court in *R (on the application of Persaud) v. Cambridge University* [2001] EWCA Civ 534 was satisfied that the process by which the applicant in that case was determined on the question of her reinstatement to the Register of Graduate Students on account of the course of research which the applicant had been admitted had ceased to be viable, I am amply satisfied that the process of deciding and the decision on the conferment of PhD on the appellant following the completion, submission of and *viva voce* of his thesis have been extremely wanting.

[198] Even on merits, this appeal would invite the exceptional exercise of discretion to intervene in his case as the factual matrix clearly illustrate the decisions of the respondent to be so devoid of reason and good conscience, irrational and unreasonable while the legal reasoning is seriously flawed. Put simply, the impugned decisions are unlawful and must be quashed with necessary consequential orders as sought, granted.

[199] A note on the respondent's submissions where amongst others, it rationalised why appeals were not filed against the two earlier decisions; and why and what their affidavits filed in those earlier judicial proceedings meant or supposed to mean. I can only say that this is far too late and cannot be condoned by any court. Judgments and decisions of the court must be respected and there cannot be any backdoor or collateral appeal against those decisions.

[200] Consequently, the appeal is allowed with costs and the decision of the High Court is set aside. I further allow the orders sought against the respondent as set out at pp. 46-49 of the record of appeal.